



MEMORANDUM

To: Transportation and Public Works Committee
From: William Appleton, Public Works Director
Date: 6/21/18
Subject: China National Sword Policy Impacts on West Coast Recycling

Purpose:

To discuss the impacts of the China National Sword Policy (a policy put into place by the Chinese Government reducing the acceptable level of contamination within recyclable commodities (aluminum, plastics, mixed paper etc) allowed into the country), on the City's Solid Waste and Recycling contractor, Recology CleanScapes. Proposed mitigation measures intended to provide relief to Recology CleanScapes will be discussed.

Background:

The export of recyclable materials is a significant part of Washington's recycling infrastructure and the Country that has most of the world's capacity to receive and process these materials is China.

In July 2017, China announced a policy called National Sword, which limits the import of contaminated recyclable commodities and increases inspections of recyclable commodity imports. In October, the [Solid Waste Association of North America issued a notification about the policy](#), which went into effect in March 2018. This policy change is already starting to have adverse impacts on California, Oregon and Washington, and is resulting in more material being stockpiled at solid waste facilities and recycling centers or disposed of in landfills. Furthermore, in March of 2018, China began the Blue Sky 2018 enforcement campaign to prevent the import of materials outlined in the country's recycling ban. The materials banned by the end of 2018 include post-industrial PE, PET, PS, PVC and other scrap plastic. Additional banned materials include slag and residue from smelted steel and iron; a variety of metal and electrical appliance scraps, such as electric motors, wires and cables; and compressed scrap from cars.

Both the National Sword Policy and the Blue Sky campaign have resulted in a collapse in the value of recyclable commodities such as mixed paper, cardboard and plastics and has made unavailable more than 50% of the world's capacity for processing these materials into products for reuse/resale.

In response to this, waste management and recycling industry are taking steps to encourage waste prevention, reduce contamination of recyclable materials, and improve post-collection processing. Recology CleanScapes has hired more workers at their material recovery facility (MRF) and has slowed down sorting lines to ensure contaminated (nonrecyclable) material is diverted before recyclables are baled for export. However, existing market conditions coupled with the foreseeable future strongly suggest that additional measures will need to be taken if the waste management and recycling industry is to remain healthy.

One approach to mitigating this significant impact on our Solid Waste and Recycling Contractor would be to add a temporary surcharge to our ratepayer's bill until market conditions recover. For discussion purposes, Recology CleanScapes has provided a Recycling Cost of Service Analysis showing the monthly rate impact per account for three different recycling adjustment options.



China Sword STAKEHOLDERS MEETING

May 2018



Current Status of Recycling Industry





Current Status of Recycling Industry

- **Early 2013** **Green Fence goes up**
- **2014** **Port slow down**
- **November 2016** **Plastic China released**
- **February 2017** **National Sword announced**

Focus

China puts up a green wall to US trash

US recyclers are nervous about losing their large market as China enforces new environmental laws this year.

By Peter Ford, Staff Writer | JUNE 19, 2013



Photo by Cancan Chu/Getty Images

empt a

RECYCLING > PLASTICS

China Enacts "National Sword 2017" Crackdown on Waste Imports

Some regard this campaign as the second Green Fence.





Current Status of Recycling Industry

March 2017

Enforcement on illegal activity (smuggling) is heightened

July 2017

China says it will ban certain recovered material imports

Posted on July 19, 2017

by [Colin Staub](#)





Current Status of Recycling Industry

Late 2017

Oh, Scrap: China, the Biggest Buyer of America's Trash, Wants No More

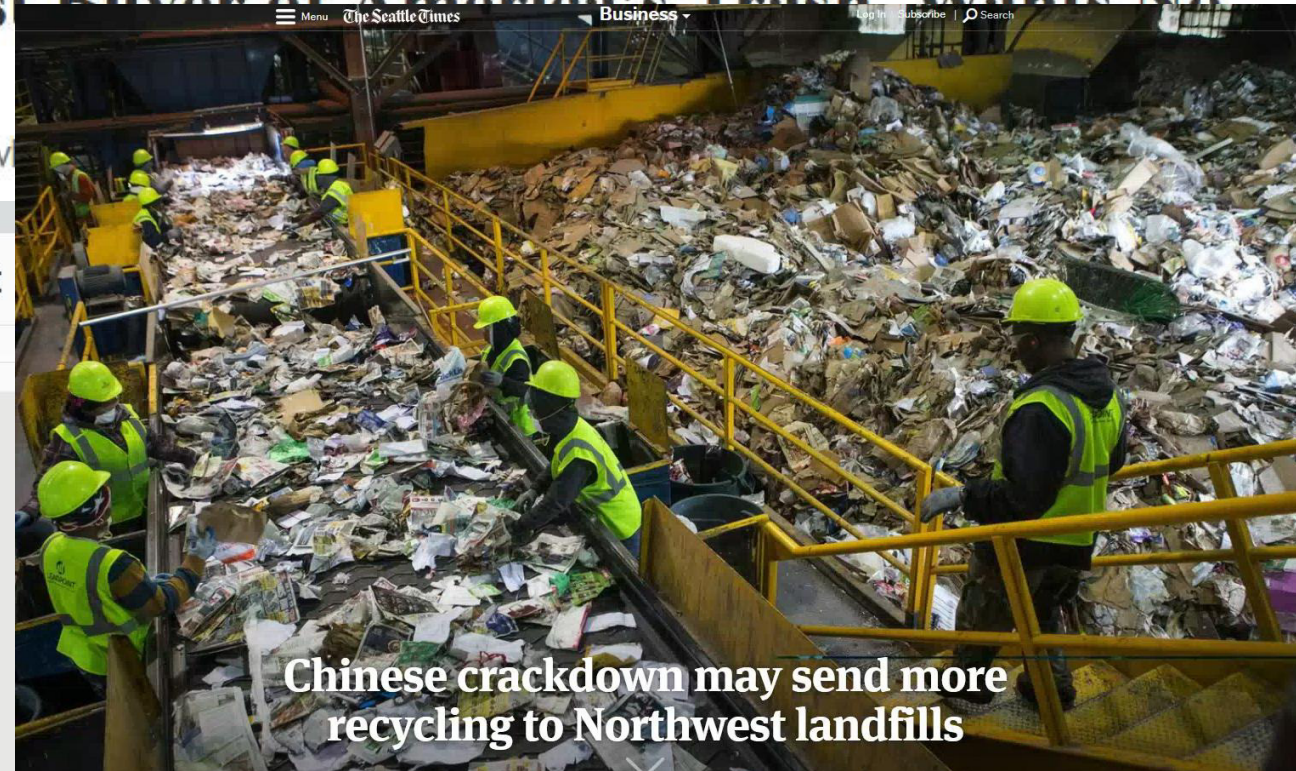
With enough of its own, China doesn't want U.S. scrap, w

Recycling is in trouble — and it might be your fault

Paul Singer, USA TODAY Published 2:22 p.m. ET April 20, 2017 | Updated 2:34 p.m. ET April 28, 2017



The cost of recycling is increasing due to contamination by items that can't be recycled. USA TODAY



Chinese crackdown may send more recycling to Northwest landfills



Current Status of Recycling Industry

November 2017

EUWID | RECYCLING AND WASTE MANAGEMENT

News Markets Archive E-Paper Print e

Good evening dear user!

IMPACT

China No Longer Wants Your Trash. Here's Why That's Potentially Disastrous.

The country has been the "world's wastebasket" for decades. But starting Jan. 1, China has said "no more."

By Dominique Mosbergen
01/24/2018 10:47 am ET | Updated Jan 24, 2018

POLICY

China sets 0.5 per cent contaminant limits for paper and plastics

17.11.2017 – The Chinese government notified the World Trade Organization (WTO) of new contaminant limits for wastes imported as raw materials on 15 November. According to the submitted documents, the new regulations are to go into effect on 1 March 2018. WTO members have until 15 December to comment.



Shifting shi

Early 2018



Current Status of Recycling Industry

March 2018

RESOURCE RECYCLING

Your trusted source for recycling news and analysis

fills as

China's ban hits additional materials

Posted on April 24, 2018

by [Colin Staub](#)

Chinese authorities plan to halt imports of more scrap categories by the end of the year, including post-industrial scrap plastic and a variety of scrap metals. The country also announced a list of even more imports it will ban by the end of 2019.

The Chinese Ministry of Ecology and Environment (MEE) [announced](#) April 19 that it is set to recategorize post-industrial PE, PET, PS, PVC and other scrap plastic as materials banned from import by the end of 2018, according to an [English translation](#) of the announcement provided by the Institute of Scrap Recycling Industries (ISRI).



Scrap News ▾ Conferences ▾

with Blue Sky 2018





Current Status of Recycling Industry

April 2018

Newsroom

Natural Resources and Parks
Public Affairs

King County forms task force to seek solutions to China recycling import restrictions

April 19, 2018

May 2018

China trash ban is a global recycling wake up call

by Ivana Kottasová @ivanakottasova

April 20, 2018: 11:08 AM ET

Recommend 1.9K



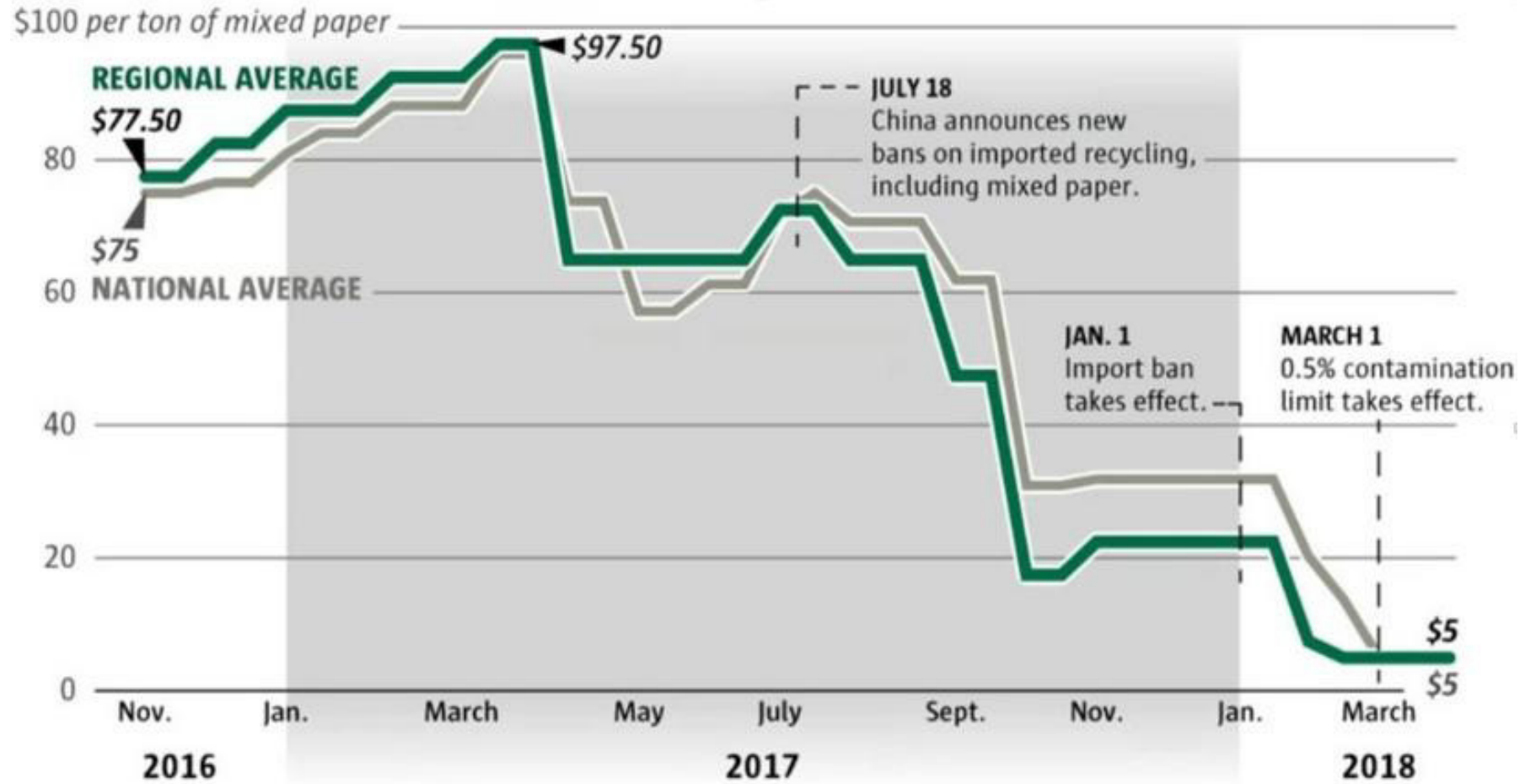
OAKLAND, CA, May 4, 2018 (PPI Pulp & Paper Week) - A dramatic announcement by the government of China instantly halted new bookings for US recovered paper late this week and effectively left market players portending that market prices would plummet.



ng
market issues finally come into focus



Market Update

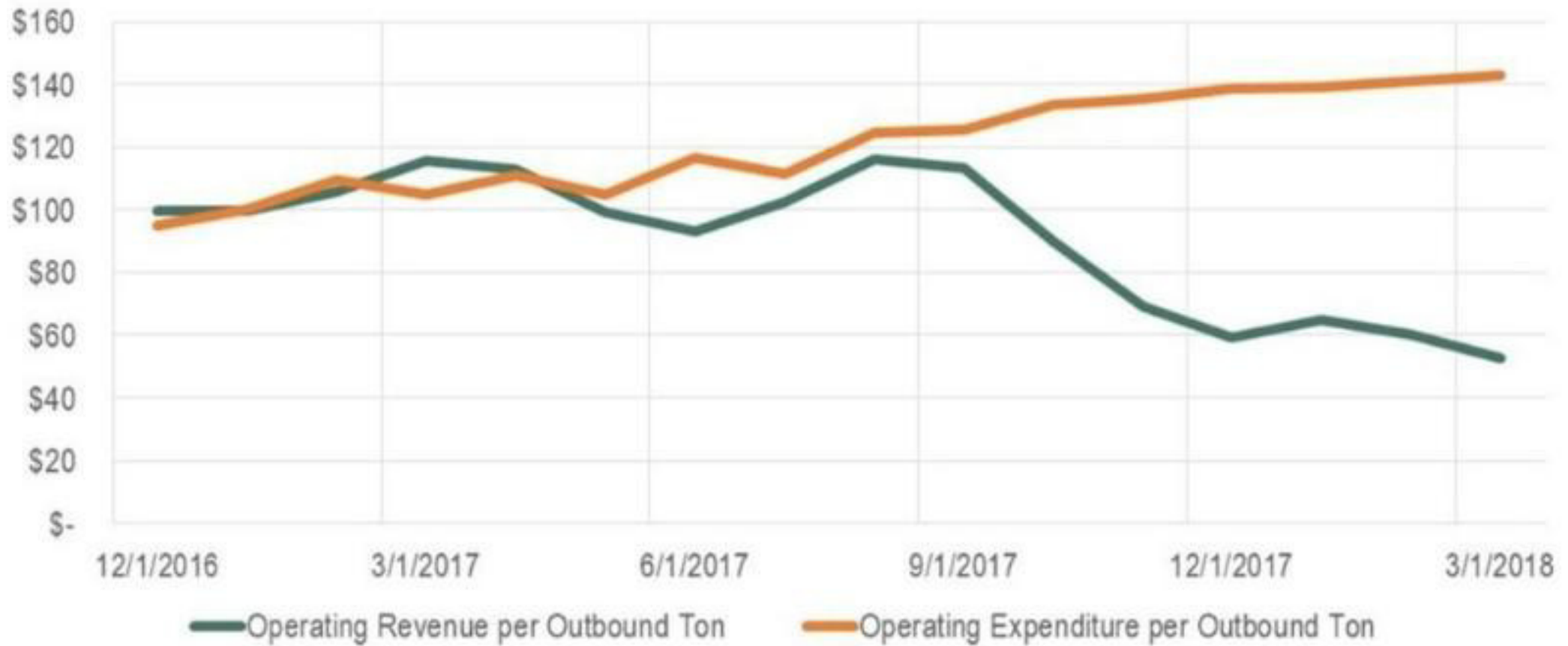


Source: RecyclingMarkets.net

EMILY M. ENG / THE SEATTLE TIMES



Market Update



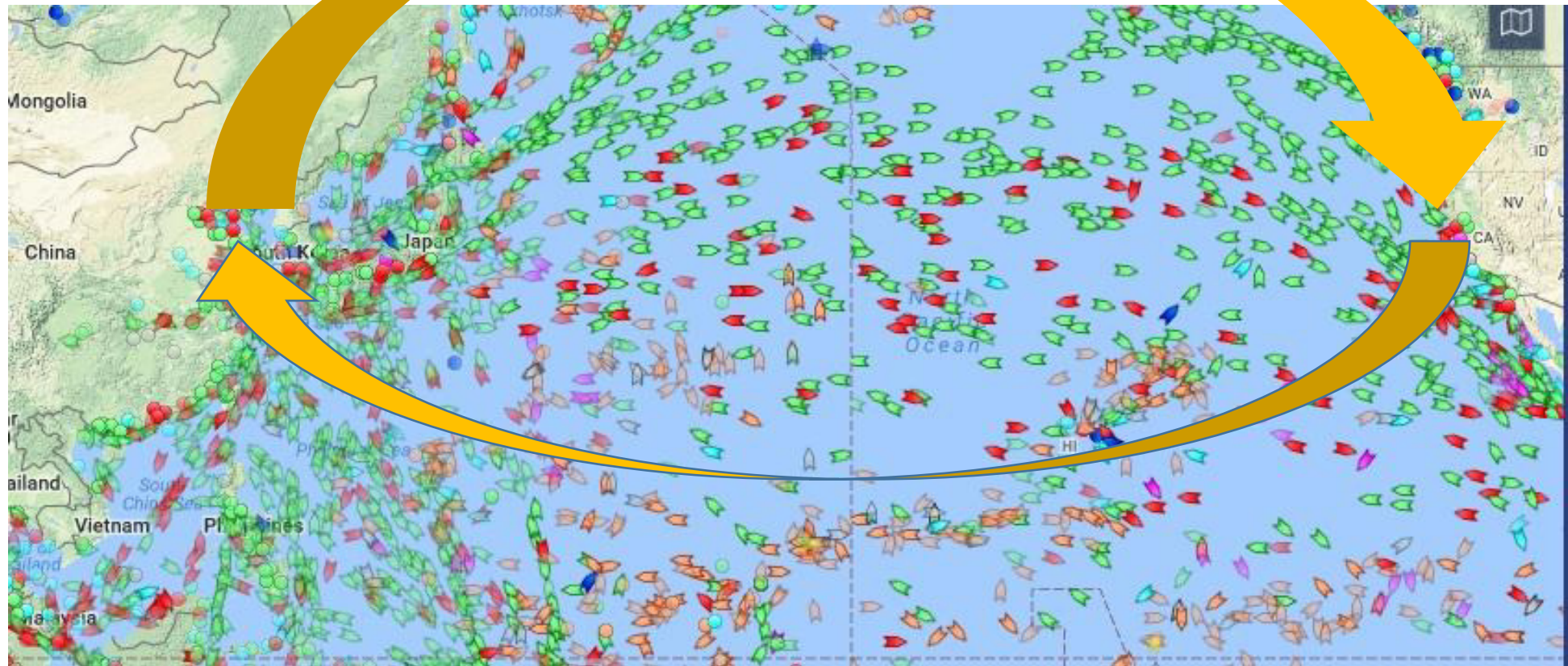
Market Update

- ✓ OCC
 - ✓ #12 OCC
 - ✓ #11 OCC
- ✓ Mixed paper
- ✓ There's a market for everything, but at the right price/quality





Trade Deficit





FIBRE TRADE INC.

- Direct Mill buyer
 - Established in 1987
- Packer
 - Shred Works packs OCC, Office Pack
- Broker
 - OCC & Various grades of paper
- ISO: 9001

DISCUSSION POINTS

1. Current Market update
 - China Environment and Control
 - CCIC Issues
2. Alternative Markets
 - South East Asia
 - Domestic Market
 - Other
3. Issues at Port and Transportation Costs
4. Specification Standards of Alternative Markets
 - OCC
 - Mix Paper

MIXED PAPER MARKETS

Mixed Paper	Q1 2017	Q1 2018	% Growth
India	90,143	279,482	210%
Indonesia	23,296	88,189	279%
Canada	19,784	56,943	188%
Vietnam	4,005	36,127	802%
Taiwan	5,554	14,247	157%
Colombia	516	7,406	1335%
United Arab Emirates	332	6,531	1867%
Ecuador	403	5,345	1226%
Malaysia	392	4,602	1074%
Significant Comparison Markets			
China	579,487	25,720	-96%
Mexico	32,321	32,130	-1%

OCC MARKETS

Corrugated/Board	Q1 2017	Q1 2018	% Growth
India	169,557	507,005	199%
Korea	61,074	104,716	72%
Vietnam	44,000	106,483	142%
Indonesia	41,258	108,174	162%
Taiwan	39,281	56,879	45%
Thailand	12,192	49,044	302%
Italy	8,337	36,064	333%
Germany	6,313	21,508	241%
Significant Comparison Markets			
China	1,548,974	1,277,589	-18%
Canada	72,218	63,423	-12%
Mexico	109,125	111,978	3%



Recology's Response

QUALITY





Recology's Response

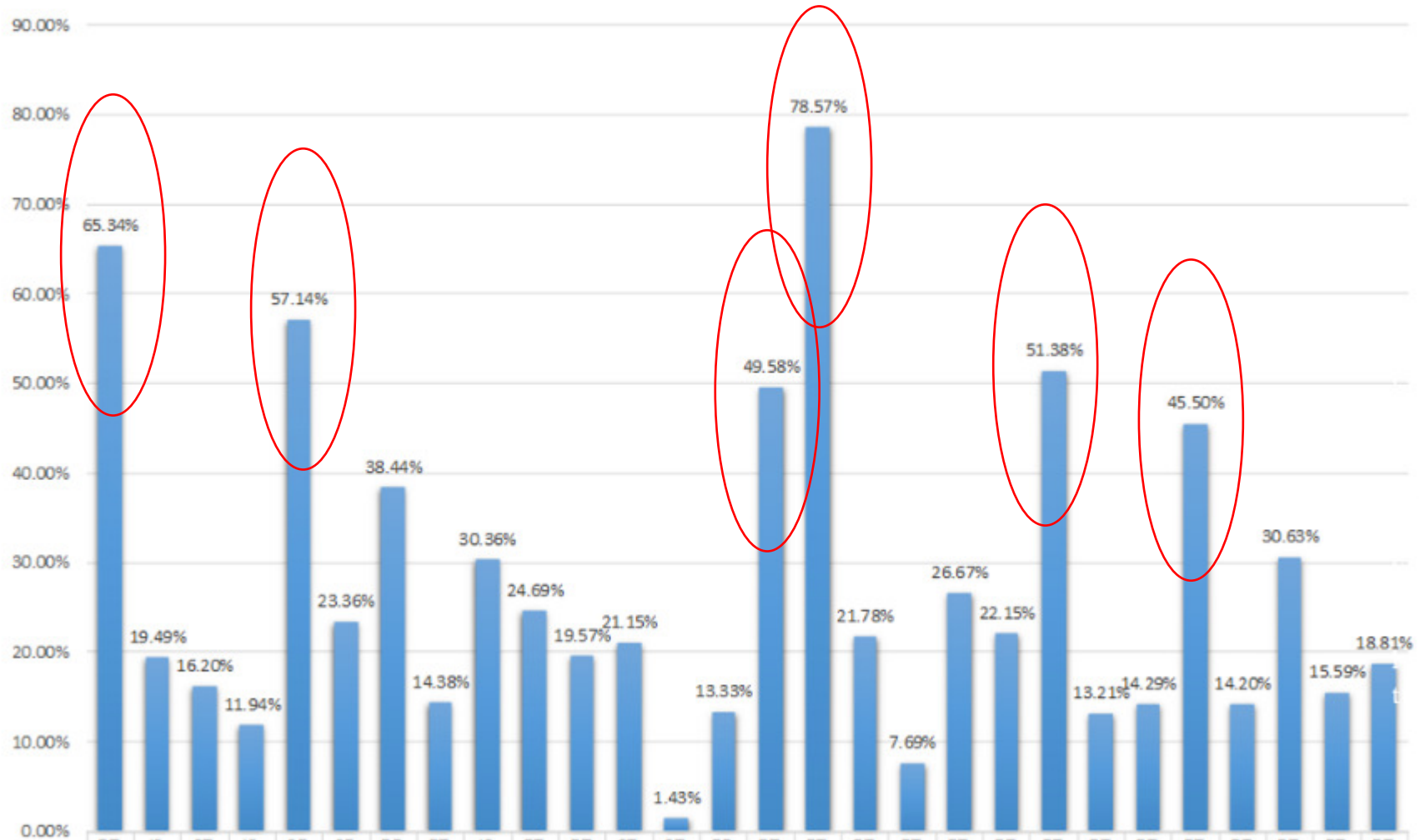
STAFFING

- ✓ Increased staffing by 15%
- ✓ Reduced belt speed by 25%
- ✓ Decreased throughput
- ✓ Increased overtime
- ✓ Reduced third party tons



Recology's Response

INBOUND MATERIAL AUDITS



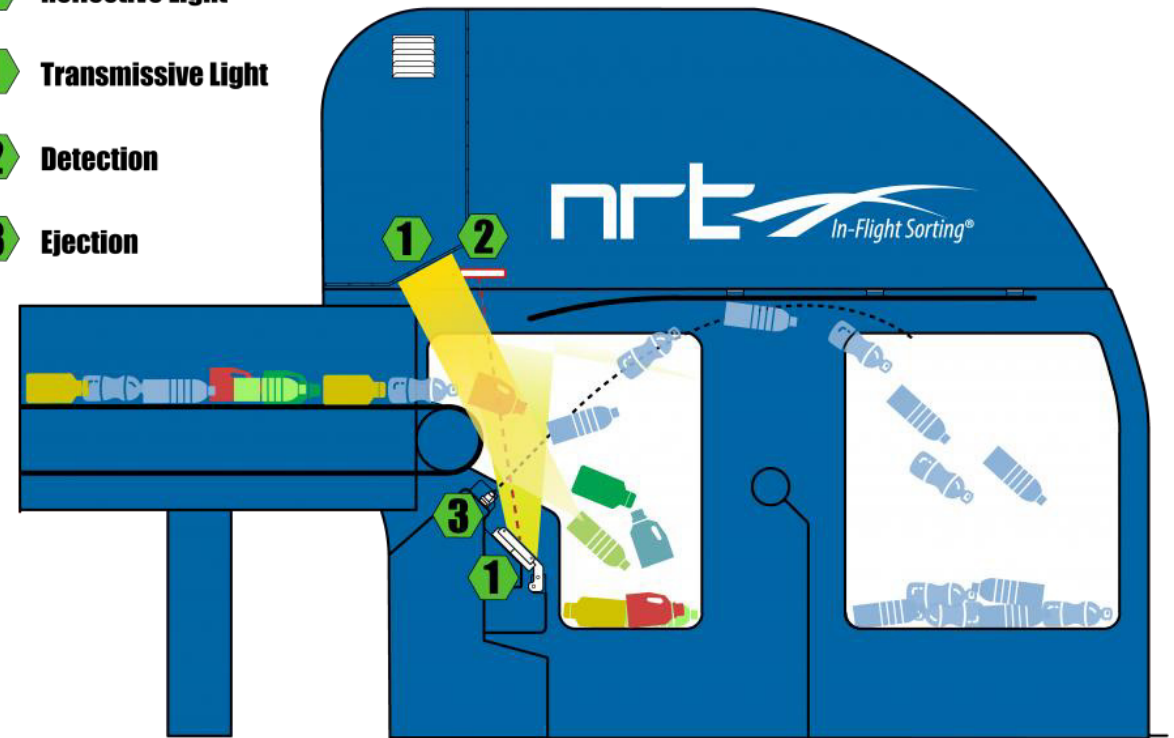


Recology's Response

NEW TECHNOLOGY



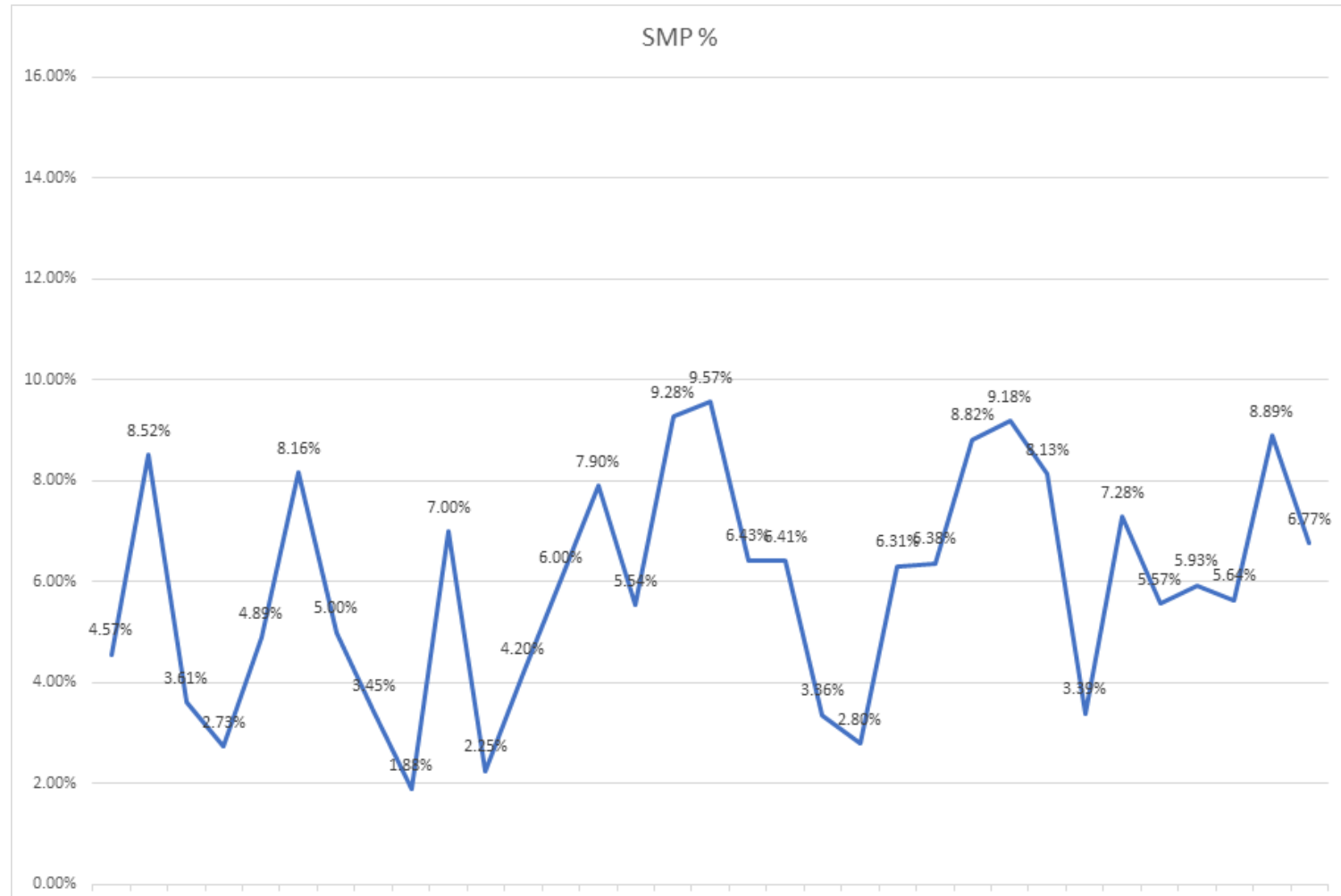
- 1** Reflective Light
- 1** Transmissive Light
- 2** Detection
- 3** Ejection





Recology's Response

INTERNAL AUDITING





Recology's Response

UPSTREAM AUDITING



Contamination Audit

Recology CleanScapes
117 South Main St
Seattle, WA, 98119, 1-206-859-6700

No.
00021

New Date
02/21/2018

Recycling Container

Was any contamination found in the recycling?

Yes

What is the estimated percentage of overall contamination?

100

1. If yes, what are the contaminants?

Textiles, food, construction debris

Comments/ recommendations

Put a lock on container and increase size of garbage container

Photo 1



Description of photo 1

Photo 2



Description of photo 2

Photo 3



Description of photo 3

Recology CleanScapes
Published by Danielle Gambogi [?] · February 28 ·

Fully free of food residue, aluminum foil and pie trays are readily #recyclable! 🌱👍👍



Recology CleanScapes
Company [Send Message](#)

Recology CleanScapes
Published by Danielle Gambogi [?] · March 14 ·

#Plastic lids under three inches that CANNOT be screwed back onto an empty #plastic bottle should be tossed in the trash.



Recology CleanScapes
Company [Send Message](#)

Recology CleanScapes
Published by Danielle Gambogi [?] · April 2 ·

Did you know? #Recyclables should be placed loose in your blue bin. Avoid use of black or white plastic bags to contain recyclables. 🌱👍👍



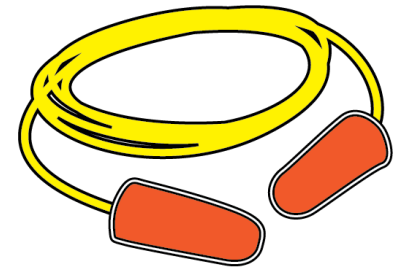
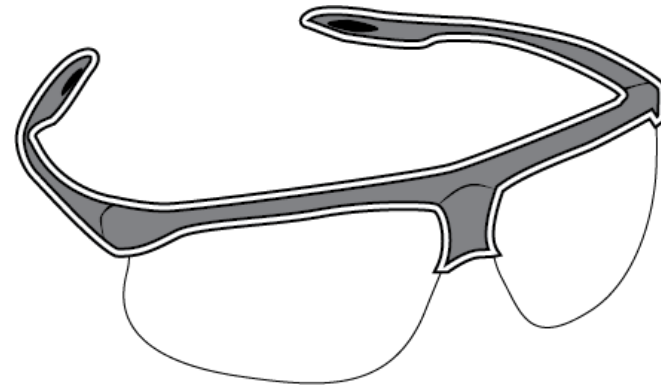
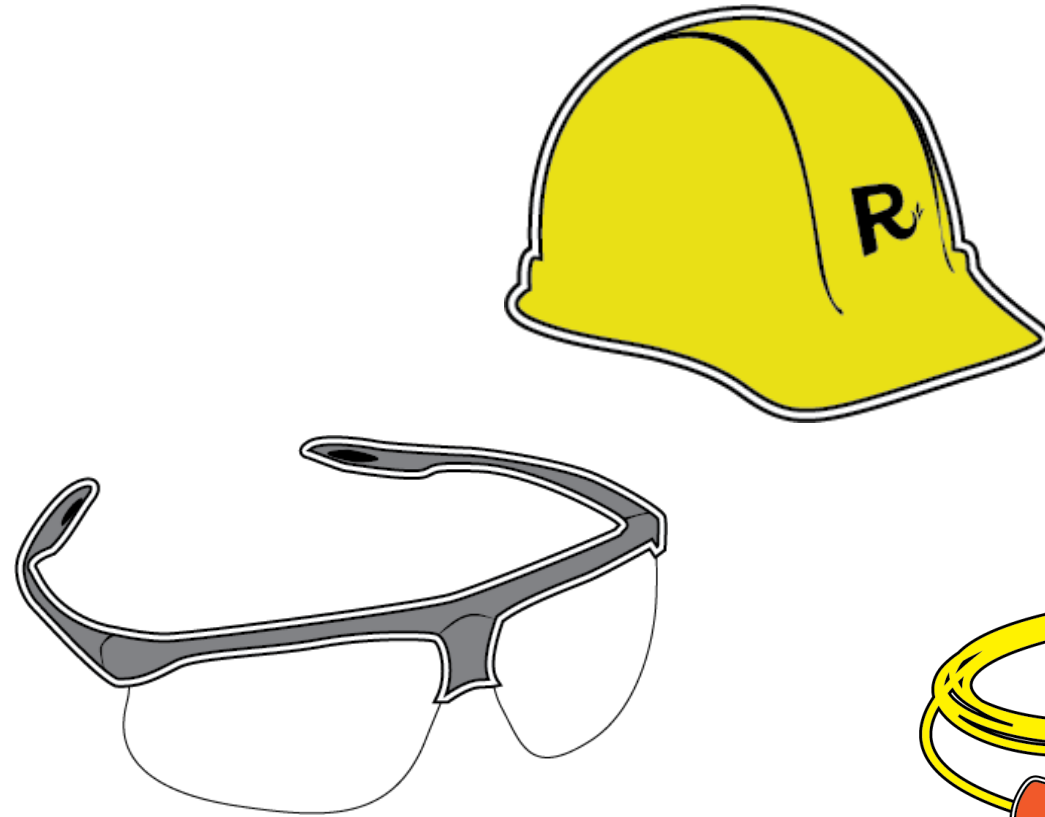
Recology CleanScapes
Company [Send Message](#)

Recology's Response CUSTOMER COMMUNICATION

- ✓ Social media
- ✓ Website
- ✓ Invoice Messages
- ✓ Monthly E-Newsletter

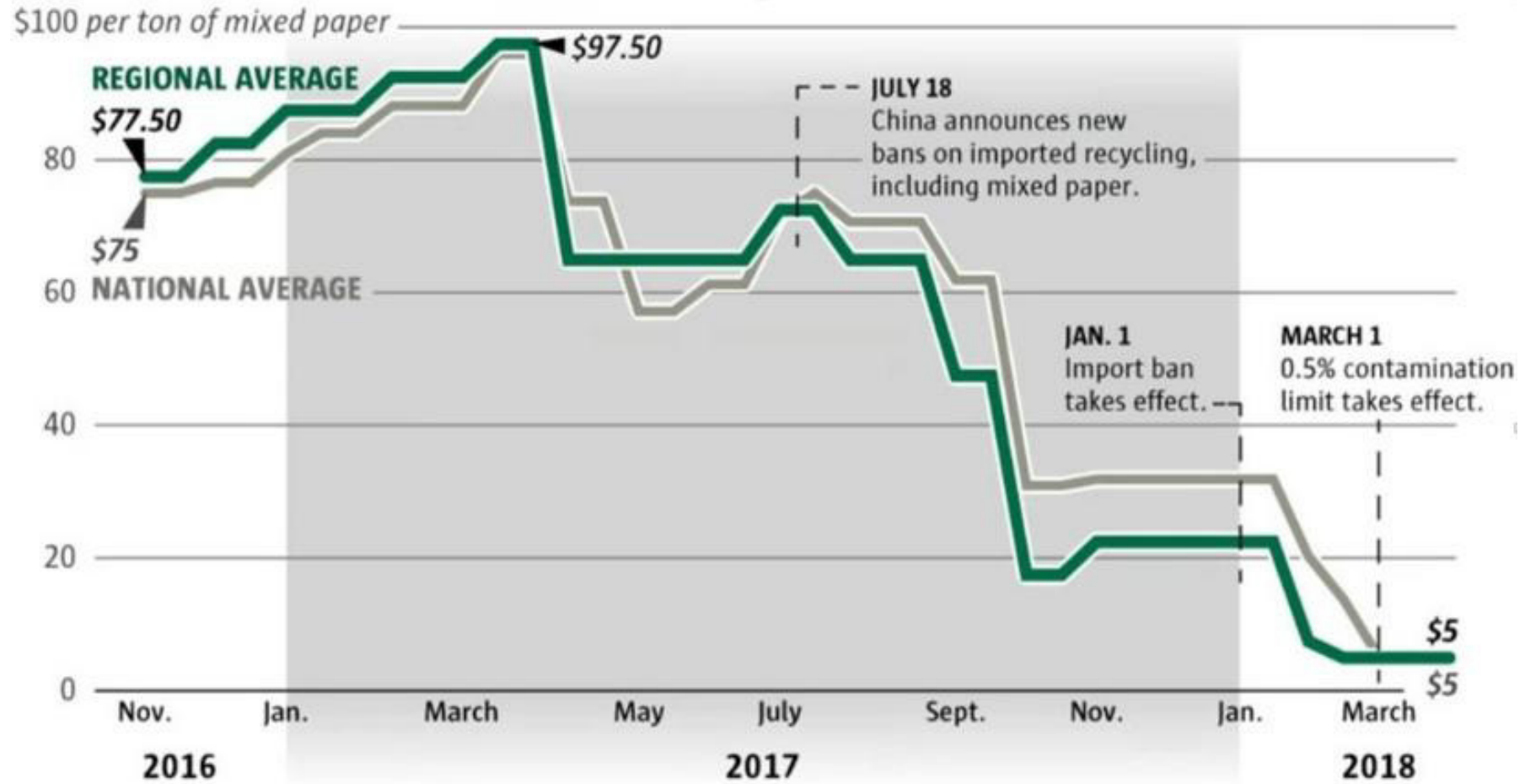


Facility Tour





Market Update

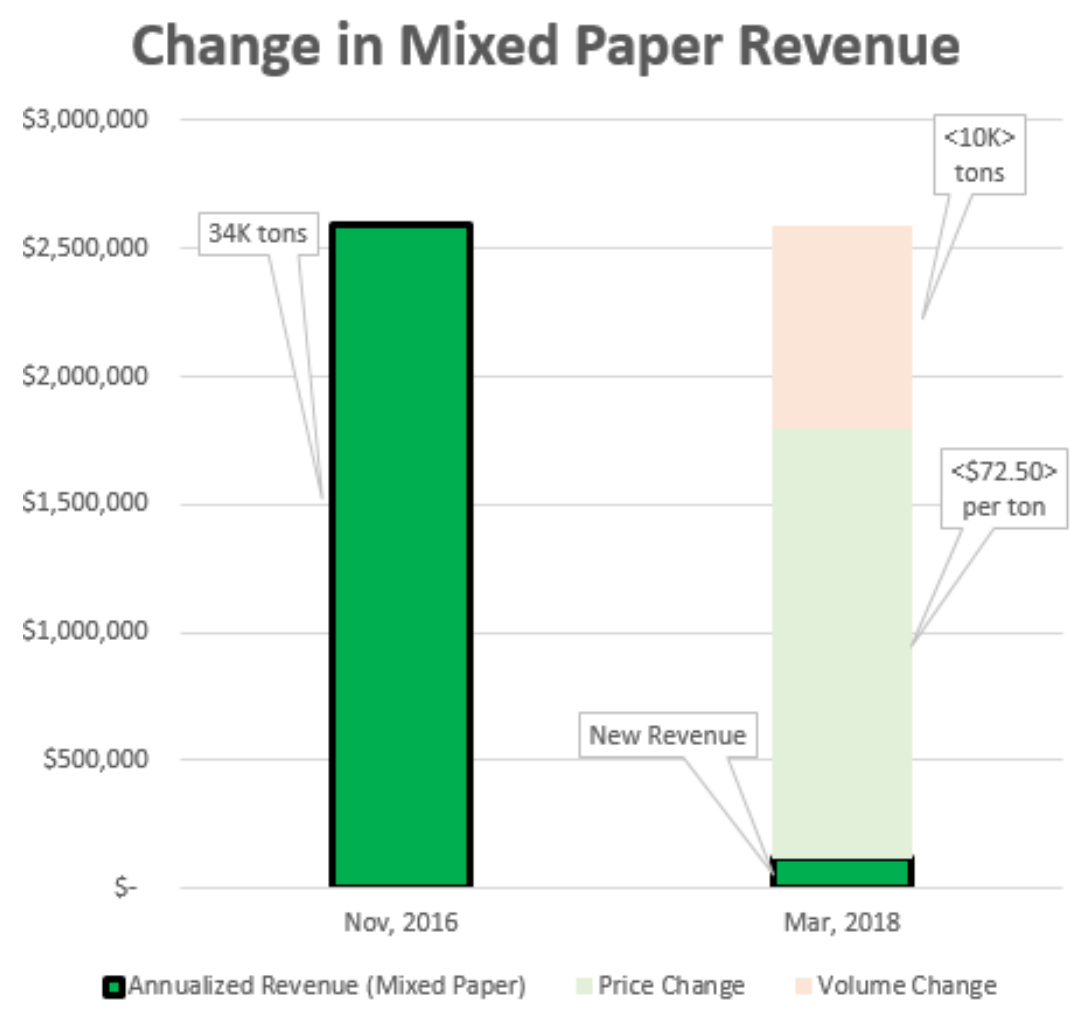


Source: RecyclingMarkets.net

EMILY M. ENG / THE SEATTLE TIMES



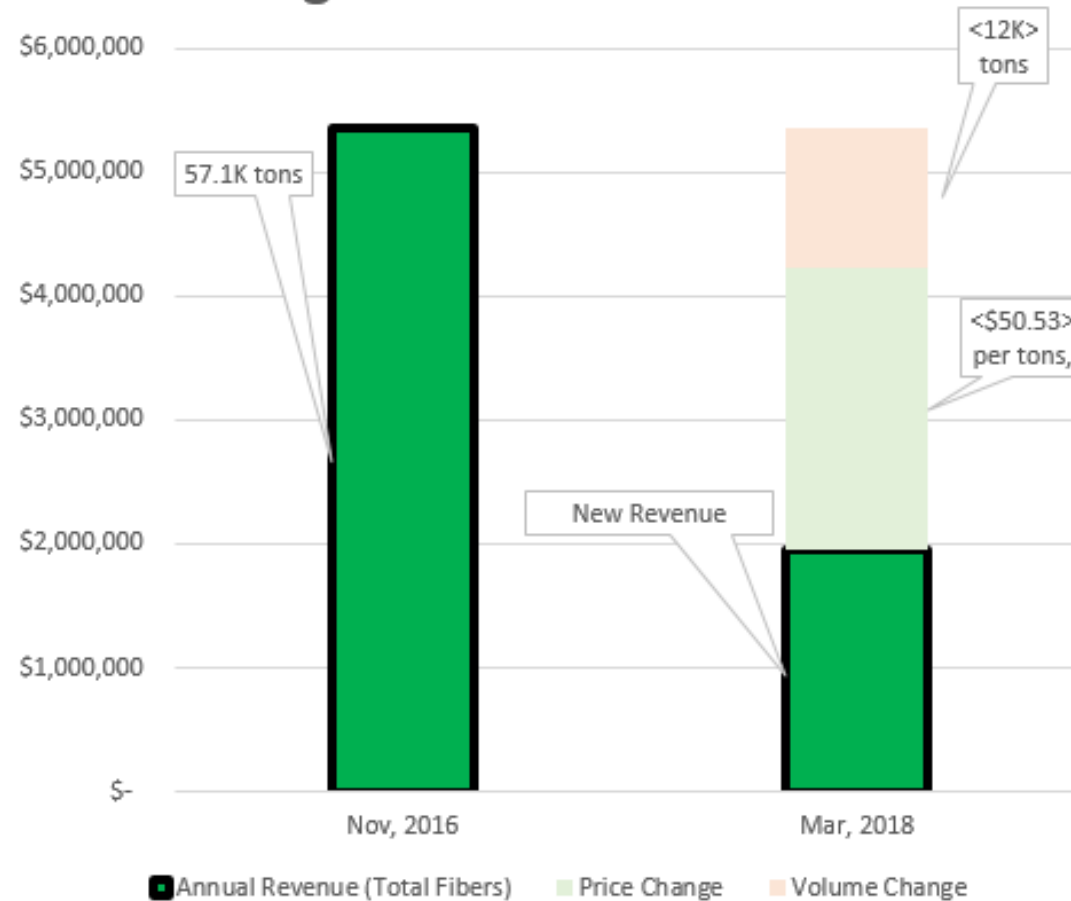
Financial Impact





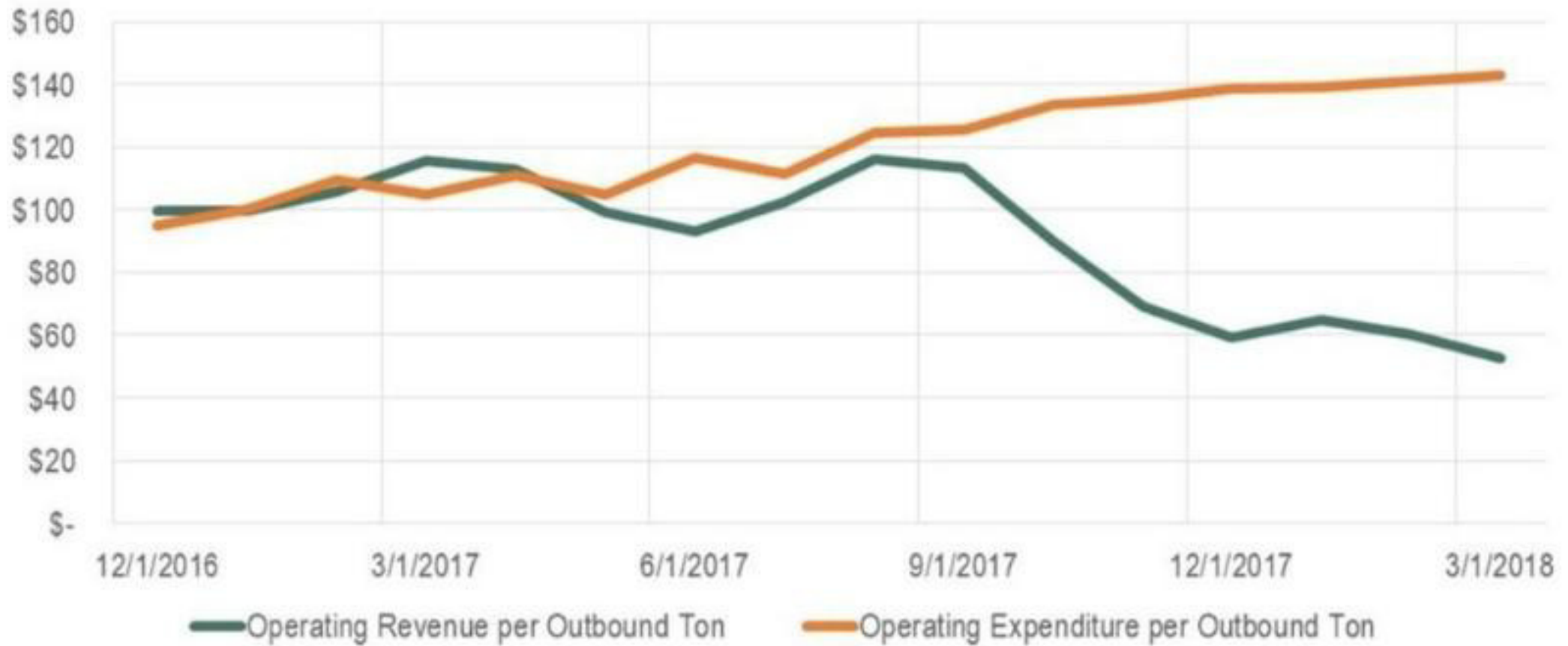
Financial Impact

Change in Total Fiber Revenue





Financial Impact





Guiding Principles for Financing Recycling

Oregon Revised Statutes: "just, reasonable, and adequate"

459A.085 City, county authority to issue collection service franchises; opportunity to recycle; rates. (1) The Legislative Assembly finds that providing for collection service including but not limited to the collection of recyclable material as part of the opportunity to recycle is a matter of statewide concern.

(2) The exercise of the authority granted by this section is subject to ORS 221.735 and 459.085 (3).

(3) It is the intent of the Legislative Assembly that a city or county may displace competition with a system of regulated collection service by issuing franchises which may be exclusive if service areas are allocated. The city or county may recognize an existing collection service. A city or county may award or renew a franchise for collection service with or without bids or requests for proposals.

(4) In carrying out the authority granted by this section, a city or county acts for and on behalf of the State of Oregon to carry out:

(8) The rates established under this section shall be just and reasonable and adequate to provide necessary collection service. The rates established by the city or county shall allow the person holding the franchise to recover any additional costs of providing the opportunity to recycle at the minimum level required by ORS 459.005, 459.015, 459.035, 459.250, 459.992 (1) and (2), 459.995 and 459A.005 to 459A.665 or at a higher level of recycling required by or permitted by the city or county. The rates shall also allow the person to recover the costs of education, promotion and notice of the opportunity to recycle provided by a person holding a franchise.

(b) The opportunity to recycle may be provided by:

(A) The person holding the franchise;

(B) Another person who provides the opportunity to recycle to the franchise holder's customers; or

(C) A person who is granted a separate franchise from the city or county solely for the purpose of providing the opportunity to recycle.

(c) In determining who shall provide the opportunity to recycle, a city or county shall first give due consideration to any person lawfully providing recycling or collection service on June 1, 1983, if the person continues to provide the service until the date the determination is made and the person has not discontinued the service for a period of 90 days or more between June 1, 1983, and the date the city or county makes the determination.



Guiding Principles for Financing Recycling

Washington UTC:
“fair, just, reasonable, and sufficient”

2. WUTC RATE SETTING PROCESS

2.1 Rate Setting Process

The company must file its proposed rate changes in a revised tariff. The Commission must receive the revised tariff at least forty-five days before the proposed effective date. Commission

2.2 How we set rates

The company must prove its proposed rates are fair, just, reasonable, and sufficient. It must file detailed financial and operational data to prove the proposed rates are fair, just, reasonable, and sufficient. The company is entitled to recover appropriate expenses, and a reasonable profit.

verbal presentation, with its recommendation. The company, customers, and other interested persons can address their concerns to the Commissioners.

Very simply, the Commissioners can take only two actions. They can approve the proposed rates to become effective as scheduled or they can issue a complaint and order suspending the



Recology's Proposed Principles for Financing Recycling

- ✓ Fair
- ✓ Reasonable
- ✓ Adequate
- ✓ Resilient
- ✓ Transparent



Recology: a world without waste™



Recology-CleanScapes Recycling Cost of Service Analysis City Summary

NOTES

All results based on data and assumptions provided by Recology.

Assumptions and results are not recommendations from FCS GROUP; results are for informational purposes only.

Results are annualized based on actual financial, commodity revenue, and tonnage activity for recycling processing operations from:

Oct 2017	to	Mar 2018
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Franchise Service Area:	SeaTac	Total months included in analysis:	6
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Recycling Adjustment Options

	Balancing Account	Revenue Sharing	Temporary Adjustment
Description:	Customer rates adjusted based on actual operating expenses, new capital, and return on revenue target (minus commodity revenue).	Customer rates adjusted to recover current operating expenses and new capital. Commodity revenue is shared between customers and Recology. Customers' share of commodity revenues increases with prices.	Customer rates adjusted to cover annualized gap between commodity revenue and operating expenses (based on 2nd quarter of FY 2018), new capital, and return on revenue target. Adjustment is temporary; continues until commodity values recover.
Financial Assumptions Provided by Recology			
Average Commodity Revenue (\$ per Outbound Ton)	\$ 79.42	\$ 79.42	\$ 79.42
Average Operating Cost (\$ per Inbound Ton)	\$ 138.10	\$ 138.10	\$ 138.10
New capital cost to meet contamination thresholds	\$ 5,696,140	\$ 5,696,140	\$ 5,696,140
Monthly capital contribution*	\$ 67,811	\$ 67,811	\$ 67,811
Policy Assumptions Provided by Recology			
Operating cost reduction from capital investment	-7.00%	-7.00%	-7.00%
Return on revenue target:	10.00%	No Target	10.00%
Revenue sharing:	Recology customers retain all commodity revenue once return on revenue target is met.	First \$35 of ACR is shared 50%/50% between Recology and customers. 100% of commodity revenue above \$35 ACR is retained by customers.	Recology retains all commodity revenue. As commodity prices increase above current levels, adjustment to customer rates decreases.
Operating processing fee (\$ per inbound ton)	Adjusted based on actual costs	\$ 128.00	up to \$86.00

* Note: Based on 7 year useful life of equipment

SeaTac Service Area Results**

	Balancing Account	Revenue Sharing	Temporary Adjustment
System Recycling Adjustment Required (Annualized)	\$ 5,849,482	\$ 5,803,591	\$ 5,602,464
% of Inbound Tons from SeaTac	11.8%	11.8%	11.8%
Share of Recycling Adjustment (Annualized)	\$ 687,701	\$ 682,306	\$ 658,660

** Results based on market pricing through first six months of FY 2018. Changes to market pricing will impact results.

SeaTac Customer Class Results

	Balancing Account	Revenue Sharing	Temporary Adjustment
Share of Recycling Adjustment (Annualized)***	\$ 687,701	\$ 682,306	\$ 658,660
% of SeaTac Inbound Recycling Tons from:			
Single-Family Residential	22.3%	22.3%	22.3%
Multi-Family & Commercial	77.7%	77.7%	77.7%
Other Classes****	0.0%	0.0%	0.0%
Total	100.0%	100.0%	100.0%
Share of Recycling Adjustment (Annualized) To:			
Single-Family Residential	\$ 153,091	\$ 151,890	\$ 146,626
Multi-Family & Commercial	534,610	530,416	512,034
Other Classes****	-	-	-
Single-Family Residential (4,661 Accounts)			
Monthly Rate Impact per Account	\$ 2.74	\$ 2.72	\$ 2.62
Multi-Family & Commercial (7,909 cubic yards of recycling service)			
Cost per Cubic Yard of Service	\$ 5.63	\$ 5.59	\$ 5.39

*** Note: Recycling adjustment allocated across customer classes based on share of inbound recycling tons

**** Note: Costs attributed to processing materials outside city franchise service areas are allocated to other classes and excluded from adjustment options.

BACKUP INFORMATION

Key Definitions

Average Commodity Revenue (ACR)	Commodity revenue divided by outbound tons
Commodity Revenue:	Revenue generated from the sale of recyclable material
Inbound Ton:	Recycling tons delivered to MRF for processing
New Capital:	Cost estimate for MRF facility improvements presented on 5/14 by BHS
Operating Processing Fee:	Fee paid by Recology customers to offset a portion of MRF operating costs
Outbound Ton:	Recycling tons sold
Return on Revenue:	Measure of profitability, calculated by dividing net income by revenue

Recycling Material from Service Area (October 2017 to March 2018):

Recycling Inbound Tons	3,735
As a Percent of Facility Inbound Tons	11.8%

Service Area Characteristics (October 2017 to March 2018)

Customer Class	Accounts	Recycling Tons	Monthly Recycling Service Volume (in cubic yards)
Single-Family Residential	4,661	831	9,313
Multi-Family Residential	-	305	-
Commercial	972	2,599	7,909
Other	-	-	-
Extra 5	-	-	-
Extra 6	-	-	-
Total	5,633	3,735	17,222

Customer Class	Accounts	Recycling Tons	Monthly Recycling Service Volume (in cubic yards)
Single-Family Residential	82.7%	22.3%	54.1%
Multi-Family & Commercial	17.3%	77.7%	45.9%
Other Classes****	0.0%	0.0%	0.0%
Total	100.0%	100.0%	100.0%



MEMORANDUM

To: Transportation and Public Works Committee
Through: William Appleton, Public Works Director
From: Florendo Cabudol, City Engineer
Date: 6/21/18
Subject: Small Cellular Site Franchise Agreements

Purpose:

This item/presentation purpose is to respond to questions received from the public hearing held at the 6/12/18 RCM related to the franchise agreements for small cellular service being considered for adoption. Staff seeks Committee recommendation on how to proceed with the proposed franchise agreements.

Background:

The City has received three separate applications for franchise agreements, from Verizon, Mobilitie, and AT&T, to install and operate small cell site services in SeaTac right-of-way. This service will deploy smaller cellular antennae and install them typically on existing pole structures (ie, street light poles, utility poles) in right-of-way. These small cells contain radios and antennas (often multiple) as well as power and fiber optic wires to transmit cellular phone and data signals. This infrastructure augments capacity for data traffic in dense areas, primarily downtown cores and residential neighborhoods. The City has current telecommunication agreements with several providers. However, the franchise agreement for small cell services is different as it involves transmitting data over a cellular/wireless network versus fiber optic/cable infrastructure.

The incorrect version of the standard franchise agreement was attached to Agenda Bill 4909 in the 06/12/18 RCM Council Packet. Attached to this memorandum are the current franchise agreements for Verizon, Mobilitie, and AT&T that are being submitted for Committee and Council review. Also attached is a spreadsheet that outlines the differences between the versions of the franchise agreement.

Representatives from Verizon, Mobilitie, and AT&T are available at this meeting to address questions related to the service provider's equipment, its compliance with Federal Communications Commission regulations, third party pole lease agreements and other questions related to their practice.

ORDINANCE NO. _____

AN ORDINANCE of the City Council of the City of SeaTac, Washington granting a non-exclusive franchise to New Cingular Wireless PCS, LLC, authorizing limited use of the public road rights-of-way in the City of SeaTac, Washington.

WHEREAS, New Cingular Wireless PCS (d/b/a AT&T Wireless, or AT&T) has applied to the City for a non-exclusive franchise to construct, maintain, operate, replace and repair telecommunications facilities in, on, across, over, along, under, and/or through public rights-of-way within the City; and

WHEREAS, Section 35A.47.040 RCW and Chapter 5.25 of the SeaTac Municipal Code specify requirements for franchises in the City of SeaTac rights-of-way; and

WHEREAS, a franchise is a legislative authorization to use public rights-of-way, however, actual construction and activities in the rights-of-way will also be subject to approved permits after review of specific plans; and

WHEREAS, the SeaTac City Council held a public hearing on June 12, 2018, to solicit comments from the public and to consider whether to grant the requested franchises; and

WHEREAS, it has been found to be in the public interest that a franchise, authorizing use of public rights-of-way for wireless telecommunications facilities, be granted;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON, DO ORDAIN as follows:

Section 1. The City Council hereby grants a telecommunications franchise to New Cingular Wireless PCS, LLC (d/b/a AT&T Wireless, or AT&T) authorizing limited use of the public road rights-of-way as set forth in the Franchise Agreements attached as Exhibit A.

Section 2. The City Manager is authorized to execute the Franchise Agreement in substantially similar form as attached hereto as Exhibit A.

Section 3. This Ordinance shall be in full force and effect five (5) days after passage and publication as required by law.

ADOPTED this _____ day of _____, 2018, and signed in authentication thereof on this _____ day of _____, 2018.

CITY OF SEATAC

Michael Siefkes, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:

Mary E. Mirante Bartolo, City Attorney

[Effective Date: _____]

[Small Cell Franchises]

EXHIBIT A

After Recording Return to:

City of SeaTac
Attn.: City Clerk's Office
4800 S. 188th Street
SeaTac, WA 98188-8605

Grantor:	City of SeaTac
Grantee:	New Cingular Wireless PCS, LLC
Tax Account No:	Not Assigned
Legal Description:	City of SeaTac
Ref. # of Docs. Affected:	N/A
Document Title:	An Ordinance of SeaTac City Council Granting a Non-exclusive Franchise Authorizing Limited Use of Public Road Rights-of-Way in the City of SeaTac, Washington to New Cingular Wireless PCS, LLC

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Section 7.	Restoration of Public Rights-of-Way
Section 8.	Record Plans, Record Drawings, and Records of Grantee Facility Locations
Section 9.	Relocation of Grantee Facilities.
Section 10.	Undergrounding of Grantee Facilities
Section 11.	Maintenance of Grantee Facilities
Section 12.	Hazardous Materials
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Section 29.	Severability
Section 30.	Notice and Emergency Contact
Section 31.	Acceptance
Section 32.	Effective Date

Section 1. Grant of Franchise

1.1 Pursuant to Sections 35A.11.020 and 35A.47.040 of the Revised Code of Washington (“RCW”) the City of SeaTac, a political subdivision of the State of Washington (the “City”), hereby grants to New Cingular Wireless PCS, LLC, (the “Grantee”), a non-exclusive franchise to use those portions of the City’s rights-of-way described in Section 1.3 below, for the purposes described in Section 1.2 below, subject to compliance with all applicable provisions of the SeaTac Municipal Code (“SMC” or “City Code”), City policies and the terms and conditions contained in this franchise ordinance (the “Franchise”).

1.2 This Franchise grants the Grantee the right, privilege and authority to use portions of the Public Rights-of-Way (as such term is defined below) of the City for the sole purposes of constructing, digging, maintaining, operating, replacing, upgrading, removing, restoring and repairing its wireless telecommunications facilities and uses incidental thereto (the “Permitted Use”) and for no other purpose or use whatsoever. Grantee hereby warrants that it expects to provide the following services within the City: small cell network consisting of a collection of interrelated Small Cell Facilities designed to deliver personal wireless services. The term “Public Rights-of-Way” or “Rights-of-Way” as used in this Franchise shall mean all public streets, roads, ways, or alleys of the City as now or hereafter laid out, platted, dedicated or improved. Pursuant to this Franchise, the Grantee is authorized to install, locate, construct, operate, maintain, use, replace, restore, upgrade and/or remove such equipment and facilities as may be reasonably necessary or convenient for the conduct of the Permitted Use (the “Grantee Facilities”), in, on, across, over, along, under or through certain Public Rights-of-Way of the City, subject to all applicable provisions of the SeaTac Municipal Code (including any City Engineering Standards), the City’s Comprehensive Plan, Sections 35A.11.020 and 35A.47.070 RCW, and the terms and conditions of City right-of-way use permits issued pursuant to the SMC and Section 4 of this Franchise. This Franchise merely authorizes the Grantee to occupy and use the Public Rights-of-Way at issue, and does not transfer, convey or vest any easement, title, servitude, or other real property interest in or to any Public Right-of-Way or portion thereof in or to the Grantee.

1.3 This Franchise covers all Public Rights-of-Way located within the City of SeaTac as now or hereafter laid out, platted, dedicated or improved.

Section 2. Non-exclusive Franchise

2.1 This Franchise is granted upon the express condition and understanding that it shall be a non-exclusive franchise which shall not in any manner prevent or hinder the City from granting to other parties, at other times and under such terms and conditions as the City, in its sole discretion, may deem appropriate, other franchises or similar use rights in, on, to, across, over, upon, along, under or through any Public Rights-of-Way. Owners, whether public or private, of any authorized facilities or equipment installed in, on, across, over, along, under, and/or through a Public Right-of-Way prior to the construction and/or installation of Grantee’s Facilities in the same location, shall have preference as to positioning and location of their facilities. The position and location of all Grantee’s Facilities in the Public Rights-of-Way shall be subject to the authority of the City Engineer.

2.2 This Franchise shall in no way prevent, inhibit or prohibit the City from using any of the Public Rights-of-Way covered or affected by this Franchise, nor shall this Franchise affect the City's jurisdiction, authority or power over any of them, in whole or in part. The City expressly retains its power to make or perform any and all changes, relocations, repairs, maintenance, establishments, improvements, dedications, or vacations of, or to any of the Public Rights-of-Way as the City may, in its sole and absolute discretion, deem fit, including the dedication, establishment, maintenance and/or improvement of new Public Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 3. Term; Early Termination

3.1 The term of the Franchise shall be for a period of approximately five (5) years (the "Term"), beginning on the Effective Date of the Franchise (as such term is defined in Section 32 of this Franchise), and continuing until June 30, 2023 (the "Term Expiration Date"), unless earlier terminated, revoked or modified pursuant to the provisions of this Franchise.

3.2 If any federal, state, or local laws or regulations and any binding judicial interpretations thereof (collectively, "Laws") that govern any aspect of the rights or obligations of the parties under this Franchise shall change after the Effective Date and such change makes any aspect of such rights or obligations inconsistent with the then-effective Laws, then the parties agree to promptly reopen the terms of this Franchise in order to make amendments as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.

3.3 Grantee may terminate the Franchise for any reason or no reason in Grantee's sole discretion upon thirty (30) days written notice to the City, in which case Grantee shall remove Grantee Facilities within ninety (90) days of termination of the Franchise or, with the approval of the City Engineer, abandon in place such equipment, as provided in Section 14.

Section 4. Regulation of Use; Permits Required

4.1 The installation, location, maintenance, operation, relocation, removal or any other work related to any of the Grantee Facilities occurring in, on, across, over, along, under, and/or through any Public Right-of-Way covered by this Franchise, shall be performed in a safe and workmanlike manner, in such a way as to minimize interference with the free flow of traffic and the use of adjacent property, whether such property is public or private.

4.2 The Grantee shall not commence any work within Public Rights-of-Way until a right-of-way use permit authorizing such work has been issued by the City pursuant to the SMC. In addition to any standards of performance imposed by this Franchise, any and all work performed by Grantee pursuant to this Franchise shall be performed in accordance with all City Codes and standards applicable to such work, including the City-approved plans and specifications for the work, and the terms and conditions of any right-of-way use permit and/or other permits and/or approvals required under the SMC in order to accomplish the work (e.g., lane closure or road detour permits). Grantee understands and acknowledges that some or all of Grantee's activities may require additional project permits and approvals under City land use codes and development regulations, and Grantee accepts full responsibility for obtaining and complying with same.

4.3 In addition to any criteria set forth in Chapter 5.25 of the SMC, the City Engineering Standards, and the City's utility accommodation policies, in reviewing the Grantee's application for any right-of-way use permit pursuant to this Franchise, the City Engineer may, but is not required to, apply the following criteria in reviewing proposed utility routes and in the issuance, conditioning, or denial of such permit:

- (i) the capacity of the Public Rights-of-Way at issue to accommodate the proposed Grantee Facilities;
- (ii) the capacity of the Public Rights-of-Way at issue to accommodate additional utility, cable, telecommunications, or other public facilities if the right-of-way use permit is granted;
- (iii) the damage or disruption, if any, to public or private facilities, improvements, service, travel, or landscaping if the right-of-way use permit is granted;
- (iv) the public interest in minimizing the cost and disruption of construction within the Public Rights-of-Way at issue, including, but not limited to, coordination with future utility installation or City projects;
- (v) recent and/or proposed construction and/or improvements to the Public Rights-of-Way at issue;
- (vi) the availability of alternate routes, locations, and/or methods of construction or installation for the proposed Grantee Facilities, including, but not limited to, whether other routes are preferred; and
- (vii) whether the Grantee has received all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies with jurisdiction over the activities proposed by the Grantee.

4.4 Prior to commencing any work in a critical area as defined by City Code, the Grantee shall comply with all applicable requirements of the City's critical areas regulations, and shall obtain any and all required permits and approvals. The granting of this Franchise shall in no way relieve the Grantee from its responsibility for avoiding "take" of any threatened or endangered species as defined by the Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., as amended, in the performance of any work authorized by this Franchise and/or any right-of-way use permits.

Section 5. Emergency Work

5.1 Should any of the Grantee Facilities in the Public Rights-of-Way break or become damaged such that an immediate danger to the property, life, health or safety of any individual is presented, or should any site upon which the Grantee is engaged in construction or maintenance activities pursuant to this Franchise for any reason be in such a condition that an immediate danger to the property, life, health or safety of any individual is presented, the Grantee shall immediately take such measures as are reasonably necessary to repair the Grantee Facilities at issue or to remedy the dangerous conditions on the site at issue so as to protect the property, life, health or safety of individuals. In the event of an emergency described above, the Grantee may take corrective action immediately, without first applying for or obtaining any permits or other authorizations that might otherwise have been required by the City Code and/or this Franchise. However, the emergency provisions contained in this Section 5 shall not relieve the Grantee from its obligation to obtain

any permits necessary for the corrective actions taken, and the Grantee shall apply for all such permits by the next business day after the emergency. In the event of any emergency described in this Section 5, the Grantee shall also notify the City of the emergency as soon as may be reasonably feasible after the Grantee discovers the emergency (such notice may be telephonic or email communication), but no later than the next business day.

Section 6. Compliance with Applicable Laws; Performance Standards

6.1 The Grantee shall at all times during the Term of the Franchise undertake the Permitted Use in compliance with all federal, state and local laws, rules and regulations (including, but not limited to, the City's comprehensive plan, zoning code, and other development regulations) that are applicable to any and all work or other activities performed by Grantee pursuant to or under authority of the Franchise.

6.2 During any period of installation, maintenance, operation, relocation, removal or any other work related to any of the Grantee Facilities subject to this Franchise, Grantee shall use industry accepted best-practices to ensure that, to the extent reasonably feasible, such work does not impede: (i) public use of the Public Rights-of-Way at issue for vehicular and pedestrian transportation; (ii) construction and/or maintenance within Public Rights-of-Way and other authorized facilities, equipment and improvements; (iii) the operation, maintenance or improvement by the City of the Public Rights-of-Way or other public property impacted by Grantee's work; or (iv) use of the Public Rights-of-Way for other governmental purposes.

6.3 During any periods of construction within the Public Rights-of-Way, the Grantee shall at all times post and maintain proper barricades and comply with all applicable safety regulations as required by the City Code, the City Engineering Standards, or the laws of the State of Washington, including, but not limited to, RCW 39.04.180 for the construction of trench safety systems.

6.4 Before the Grantee commences any work under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys, Grantee shall reference all such monuments and markers using a method or methods approved by the City Engineer, and a complete set of reference notes for monument and other ties shall be filed with the City prior to the commencement of construction. Reference points shall be so located that they will not be disturbed during Grantee's operations. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, as directed by the City Engineer, and to federal, state and local standards. All costs incurred pursuant to this Section 6.4 shall be borne by Grantee.

6.5 If the Grantee shall at any time plan to make excavations in any area covered by the Franchise, the Grantee shall, upon receipt of a written request to do so, provide an opportunity for the City and/or any other grantees or authorized users of the Public Right-of-Way at issue to participate in such excavation, and shall coordinate the location and installation of its Grantee Facilities with the City or such other grantees or authorized entities, PROVIDED THAT, Grantee need not permit the City or any other parties to participate in an excavation if the City Engineer reasonably determines that any of the following are true:

- (i) such joint use would unreasonably delay the performance of Grantee's work;
- (ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions for accomplishing such joint use; or
- (iii) valid safety reasons exist for denying a request for such joint use.

6.6 If the Grantee shall at any time plan to include communication facilities in furtherance of the Permitted Use, the Grantee shall provide an opportunity for the City to enter into negotiations for shared use of such communication facilities, and shall coordinate negotiation of shared use of its communication facilities with the City if such shared use is reasonably feasible; PROVIDED THAT, Grantee need not permit the City to participate in shared use of communication facilities if any of the following are true, in the reasonable judgment of the City and the Grantee:

- (i) such shared use would unreasonably delay the performance of Grantee's work;
- (ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions, including but not limited to allocation of costs amongst various parties, for accomplishing such shared use;
- (iii) valid safety reasons exist for denying a request for such shared use and/or the proposed facilities of the third party are in conflict with the best practices employed by the Grantee; or
- (iv) the installation of communication facilities is for the purpose of an emergency action to protect the property, life, health or safety of individuals.

Section 7. Restoration of Public Rights-of-Way

7.1 Promptly after completing any work in, on, under, over, across or upon any Public Rights-of-Way, including, but not limited to any excavation, installation, construction, relocation, maintenance, repair or removal of any Grantee Facilities, Grantee shall, at Grantee's sole cost and expense, restore the Public Rights-of-Way and any adjacent affected areas to a like condition or better, or as otherwise required by the City Engineering Standards. Grantee shall also comply with any and all restoration conditions contained in applicable permits or approvals, and the City Engineer shall have final authority to determine in each instance of restoration whether adequate restoration has been performed, reasonable wear and tear excepted.

Section 8. Record Plans, Record Drawings, and Records of Grantee Facility Locations

8.1 The Grantee shall maintain adequate records to document obligations performed under this Franchise. The Grantee agrees and covenants that it shall, within 120 days after completion of any construction project involving a Public Right-of-Way, provide to the City, at no cost to the City, a copy of all as-built plans, maps and records revealing the approximate final locations and conditions of the Grantee Facilities located within such Public Right-of-Way. Additionally, the City may, at any time, deliver a written request to the Grantee for copies of maps and records showing the approximate location of all or any portion of the Grantee Facilities. In such event, the Grantee shall, within thirty (30) days after receipt of the request, provide the City, at no cost to the City, with copies of the requested record plans, record drawings and other records within a reasonable time after receiving the City's request for same. The City shall have the right to review the Grantee's records regarding the subject matter of this Franchise at reasonable times, upon

reasonable notice. The right to review records shall last for two (2) years from the expiration or earlier termination of this Franchise. In addition to the maps and records of the Grantee Facility locations, the Grantee shall provide the City, upon the City's request, with copies of records of construction, maintenance, operation, inspections, or regulatory compliance for all Grantee Facilities subject to this Franchise as may be deemed necessary by the City, in its sole discretion, to manage the city roads, Public Rights-of-Way, or other property, or to protect the public health, safety, and welfare. Nothing in this Section 8 shall be construed to require Grantee to violate state or federal law concerning customer privacy, nor shall this Section 8 be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

8.2 If the Grantee considers any portion of its records provided to the City, whether in electronic or hard copy form, to be protected from disclosure under law, the Grantee shall clearly identify any specific information that it claims to be confidential or proprietary. If the City receives a request under the Public Records Act, Chapter 42.56 RCW, to inspect or copy the information so identified by the Grantee and the City determines that release of the information is required by the Act or otherwise appropriate, the City's sole obligations shall be to notify the Grantee: (a) of the request; and, (b) of the date that such information will be released to the requester unless the Grantee obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Grantee fails to timely obtain a court order enjoining disclosure, the City will release the requested information on the date specified. The City has, and by this section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the Act. The City shall not be liable to the Grantee for releasing records not clearly identified by the Grantee as confidential or proprietary. The City shall not be liable to the Grantee for any records that the City releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

Section 9. Relocation of Grantee Facilities

9.1 The Grantee agrees and covenants that it will promptly, and with as much written notice as is feasible under the circumstances (but in event less than one hundred twenty (120) days), at its sole cost and expense, protect, support, temporarily disconnect, relocate, or remove from the Public Rights-of-Way any Grantee Facilities when the City Engineer determines after full and fair consideration that such a relocation is necessary for any of the following reasons: (i) traffic conditions; (ii) public safety; (iii) dedications of new Public Rights-of-Way and the establishment and/or improvement thereof; (iv) widening and/or improvement of existing Public Rights-of-Way; (v) vacations of Public Rights-of-Way; (vi) freeway construction; (vii) change or establishment of road grade; or, (viii) the construction of any public improvement or structure by any governmental agency acting in a governmental capacity, PROVIDED that the Grantee shall generally have the privilege to temporarily bypass, in the authorized portion of the same Public Right-of-Way, upon approval by the City Engineer, any Grantee Facilities required to be temporarily disconnected or removed; AND FURTHER PROVIDED that if the City pays for or reimburses the relocation costs of another wireless telecommunications provider, under substantially similar circumstances, it shall pay for or reimburse a proportionate share of Grantee's relocation costs. In the event of a conflict between this Section 9 and the specific terms of any existing real property interests and rights owned by the Grantee, such as a utility easement or other servitude, the terms of this Section 9 shall be subject to the specific terms of the real property interests and rights owned by

the Grantee unless and until those rights are extinguished or amended: (i) by mutual agreement; (ii) pursuant to a judicial condemnation order; (iii) by negotiated sale of said property rights between Grantee and the City in-lieu of condemnation; or, (iv) by any other lawful means.

9.2 Upon the request of the City and in order to facilitate City improvements to Public Rights-of-Way, the Grantee agrees to locate and, if reasonably determined necessary by the City, to excavate and expose, at its sole cost and expense, portions of the Grantee Facilities for inspection so that the location of the facilities may be taken into account in the improvement design.

9.3 Grantee shall, upon reasonable prior written request of any non-governmental person or entity holding a permit issued by the City to move any structure, temporarily move its facilities to allow the moving of such structure, PROVIDED: (i) Grantee may impose a reasonable charge on the permittee for the movement of Grantee's Facilities and such person or entity agrees in writing to pay such charge; (ii) Grantee is granted a permit by the City for such work if a permit is needed; and, (iii) Grantee is given not less than thirty (30) business days notice to arrange for such temporary relocation, EXCEPT in any case where the City Engineer determines Grantee Facilities are not reasonably movable.

9.4 Where the City imposes conditions or requirements on a third party development requiring the relocation of any Grantee Facilities, the City shall not be responsible for paying any costs related to such relocation. Nothing in this Franchise is intended or shall be construed to prohibit the Grantee from assessing on such person or entity, other than the City, the costs of relocation as a condition of such relocation.

9.5 To assist Grantee with anticipating relocations of Grantee Facilities related to City improvements to the Public Rights-of-Way, upon request, the City will provide the Grantee with copies of the most recently adopted Six-Year Transportation Improvement Program and Annual Construction Program.

9.6 If the City determines that a City project necessitates the relocation of existing Grantee Facilities, the parties shall proceed as follows:

- (i) The City shall provide the Grantee at least one hundred twenty (120) days written notice prior to the commencement of the construction phase of the City project at issue, PROVIDED, that under the following circumstances the City need only provide the Grantee with written notice as soon as may be reasonably practicable: (a) in the event of an emergency posing a threat to public safety, health or welfare; (b) in the event of an emergency beyond the control of the City and which will result in adverse financial consequences to the City; or, (c) where the need to relocate the Grantee Facilities could not reasonably have been anticipated by the City.
- (ii) The City shall provide the Grantee with copies of pertinent portions of the designs and specifications for the City project as well as a proposed new location for the Grantee Facilities at least ninety (90) days prior to the commencement of the construction phase of the City project to enable Grantee to promptly relocate such Grantee Facilities. Upon request of the Grantee, thirty percent (30%), sixty percent (60%), and ninety-percent (90%) design plans shall be provided to the Grantee. The City and the Grantee

shall, upon the request of either party, meet to discuss the plans, specifications and schedule of the City project at issue at a mutually agreed time in a location determined by the City.

- (iii) After receipt of such notice and such plans and specifications, the Grantee shall complete relocation of its facilities within the Public Right-of-Way at least ten (10) days prior to commencement of the construction phase of the City project at no charge, cost or expense to the City, unless otherwise agreed to within a separate agreement executed by both Parties. Relocation shall be accomplished in such a manner as to accommodate the City's project. In the event of an emergency, the Grantee shall relocate the Grantee Facilities at issue within a time period reasonably specified by the City Engineer.
- (iv) The City and the Grantee may, for each individual City project, enter into an agreement for costs incurred by the City for relocation of Grantee's Facilities and associated work tied to the relocation.
- (v) In the event of an emergency, the Grantee shall relocate the Grantee Facilities at issue within a time period reasonably specified by the City Engineer.

9.7 The Grantee may, after receipt of written notice requesting a relocation of any Grantee Facilities in accordance with Section 9.6, submit to the City proposed written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives are suitable to accommodate the City project. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration but the final decision is the sole discretion of the City. Where, upon the request of the Grantee, the City incurs additional costs in performing any maintenance, operation, or improvement of or to public facilities due to measures taken by the City to avoid damaging or to otherwise accommodate one or more Grantee Facilities, the Grantee shall reimburse the City for the full amount of such additional costs promptly upon receiving the City's invoice for same. In the event the City ultimately determines that there is no reasonable or feasible alternative to relocation, the Grantee shall relocate the Grantee Facilities at issue as otherwise provided in this Section 9.

9.8 The provisions of this Section 9 shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of any Grantee Facility by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay any City projects. The Grantee shall provide certified record drawings (or as-built drawings) detailing the location of Grantee's Facilities within the Public Right-of-Way required to be relocated or removed for the purpose of the non-City project.

9.9 Should relocation be required for a City project pursuant to this Section 9, the Grantee shall be responsible for timely relocation of the Grantee Facilities at issue and the coordination of such relocation with the City (or the City's contractor for the City project). The Grantee shall be fully responsible for the costs of any delays to City projects resulting from relocations of any Grantee Facilities. The Grantee shall indemnify, defend and hold harmless the City from and against any and all claims, lawsuits, or damages, including those brought by a contractor of the City engaged

in a City project, arising out of or caused in whole or in part by the location or relocation of one or more Grantee Facilities, as more fully set forth in Section 16 of this Franchise, except to the extent such claims or damages may be due to or caused by the sole negligence or willful misconduct of the City or its employees, contractors or agents.

Section 10. Undergrounding of Grantee Facilities

10.1 The undergrounding requirements of this Section 10 shall apply where the Grantee Facilities consist of cable or any other facilities, equipment or systems which are reasonably capable of being placed underground. Where the Grantee Facilities consist of antennae or other facilities, equipment or systems which are required to remain above ground in order to be functional, the terms and conditions of this Section 10 shall not apply.

10.2 In any area of the City in which there are no aerial facilities other than antennae or other facilities required to remain above ground in order to be functional, or in any area in which telephone, electric power wires or other cables have been placed underground, the Grantee shall not be permitted to erect poles or to run or suspend wires, cables or other similar facilities thereon, but shall lay all such wires, cables or other facilities underground in the manner required by the City. The Grantee acknowledges and agrees that, even if the City does not require the undergrounding of all or any portion of the Grantee Facilities at the time the Grantee applies for the applicable right-of-way use permit, the City may, at any time in the future, and in the City’s reasonable discretion, require the Grantee to convert all or any portion of the aerial Grantee Facilities to underground installation at the Grantee’s sole cost and expense.

10.3 Whenever the City requires the undergrounding of the aerial facilities in any area of the City, the Grantee shall underground the aerial Grantee Facilities in that area of the City in the manner specified by the City, concurrently with the other affected facilities. Where other facilities are present or proposed and involved in the undergrounding project, the Grantee shall only be required to pay its fair share of common costs borne by all facilities, in addition to the costs specifically attributable to the undergrounding of the Grantee Facilities. “Common costs” shall include necessary costs not specifically attributable to the installation or undergrounding of any particular facility, such as costs for common trenching and utility vaults. “Fair share” shall be determined for a project on the basis of the number and size of the Grantee Facilities being installed or undergrounded in comparison to the total number and size of all other utility facilities being installed or undergrounded.

Section 11. Maintenance of Grantee Facilities

11.1 The Grantee shall maintain all Grantee Facilities in good condition and repair, in accordance with industry accepted best practices. This also includes any graffiti removal from Grantee’s Facilities.

11.2 The Grantee shall take necessary steps to maintain a reasonably clear area around all Grantee Facilities installed above-ground within Public Rights-of-Way. A minimum of five (5) feet of clearance will be maintained around each such object so as to provide clear visibility from the roadway for City operations and maintenance. Prior to using any chemical sprays within the

Public Rights-of-Way to control or kill weeds and brush, the Grantee must obtain the City's permission. The City may limit or restrict the types, amounts, and timing of applications provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.

Section 12. Hazardous Materials

12.1 The City understands and agrees that the Permitted Use contemplated by the Grantee involves the use by Grantee of certain chemicals and/or materials within the Public Rights-of-Way that are classified as hazardous or otherwise harmful to life, health and/or safety (any such chemical or material, a "Hazardous Material") under one or more applicable federal, state or local laws, rules, regulations or ordinances (collectively, the "Hazardous Materials Laws"). The Grantee shall be permitted to use such Hazardous Materials within the Public Rights-of-Way as are reasonably necessary for the Grantee's conduct of the Permitted Use and which are customary for the industry in which the Grantee is engaged, PROVIDED, however, that the Grantee's use of any such Hazardous Materials within the Public Rights-of-Way shall at all times be undertaken in full compliance with all Hazardous Materials Laws, including any orders or instructions issued by any authorized regulatory agencies.

12.2 The Grantee covenants and agrees that it will neither cause nor permit, in any manner, the release, seepage or spill of any Hazardous Material upon, into, under, over, across or through any Public Right-of-Way or property adjacent thereto, whether public or private, in violation of any applicable Hazardous Materials Law. Any such release, seepage or spill of any Hazardous Material within the Public Rights-of-Way that is in violation of any applicable Hazardous Materials Law and is caused by Grantee or its directors, officers, agents, employees or contractors, is, referred to as "Release."

12.3 Should a Release occur, the Grantee shall immediately upon receiving notice thereof provide written notice of the Release to the City and the Washington State Department of Ecology. The Grantee agrees it shall indemnify, defend and hold the City, its elected and appointed officials, employees, agents and volunteers (collectively, the "City Parties") harmless from and against any and all claims, lawsuits, actions, judgments, awards, penalties, fines and other damages (including, but not limited to, reasonable attorneys' fees and costs) incurred or suffered by any of the City Parties, to the extent the Release is caused by any act or omission of Grantee or its directors, officers, agents, employees or, contractors (collectively, the "Grantee Parties") within Public Rights-of-Way or property adjacent thereto, whether public or private. Grantee shall be responsible, at its sole cost and expense, for completely cleaning up and remediating, as required by any governmental agency having jurisdiction, any Release caused by any Grantee Party within Public Rights-of-Way or property adjacent thereto, whether public or private. Notwithstanding the Grantee's obligation to completely remediate same, in the event of any Release by a Grantee Party, the City may (but need not), in the interest of protecting the health, safety, welfare and property of the public, immediately take whatever actions it deems necessary or advisable, in its sole discretion, to contain, clean up or remediate the Release at issue. Should the City choose to take any actions pursuant to the preceding sentence, the City shall be entitled to repayment from the Grantee of any and all reasonable costs and expenses incurred by the City in performing such actions.

12.4 Should the Grantee cause a Release as described in Section 12.3 above, failure to promptly comply with all orders or instructions lawfully issued by any authorized regulatory agencies regarding clean-up and remediation shall constitute a material breach of this Franchise, and the City Council may terminate or suspend the Franchise in accordance with Section 23.

Section 13. Dangerous Conditions, Authority for City to Abate

13.1 Whenever the Grantee's excavation, construction, installation, relocation, maintenance, repair, abandonment, or removal of Grantee Facilities authorized by this Franchise has caused or contributed to a condition that, in the reasonable opinion of the City Engineer, substantially impairs the lateral support of the adjoining road or public or private property, or endangers the public, an adjoining public place, road facilities, City property or private property, the City Engineer may direct the Grantee to remedy the condition or danger to the satisfaction of the City Engineer, within a specified period of time and at the Grantee's sole cost and expense.

13.2 In the event that the Grantee fails or refuses to promptly take the actions directed by the City Engineer, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, in accordance with Section 13.1 above, the City may enter upon the property and take such actions as are reasonably necessary to protect the public, the adjacent roads, or road facilities, or to maintain the lateral support thereof, or actions necessary to ensure the public safety, and the Grantee shall be liable to the City for actual costs and expenses incurred by the City in performing such actions.

Section 14. Removal of Grantee Facilities; Abandonment of Grantee Facilities

14.1 In no event may all or any portion of the Grantee's Facilities located in, on, under, over, across or through the Public Right-of-Way be abandoned or temporarily abandoned in place by the Grantee. In the event of any unauthorized abandonment of all or any portion of the deactivated or abandoned Grantee Facilities by the Grantee, the City may, at its election, and in addition to any other remedies or enforcement options available to the City under this Franchise, at law or in equity, remove all or any portion of the deactivated or abandoned Grantee Facilities on behalf of the Grantee and restore the Public Rights-of-Way following such removal. Should the City choose to perform any such removal and restoration activities on the Grantee's behalf, the City may dispose of the removed Grantee Facilities in any manner it deems fit and in accordance with applicable laws, and the Grantee shall be liable to the City for all costs and expenses incurred by the City in performing such removal and restoration activities.

Section 15. Fees, Compensation for Use of Public Rights-of-Way and Taxes

15.1 The Grantee shall be subject to all permit fees allowed by law associated with activities undertaken within Public Rights-of-Way through the authority granted to the Grantee by this Franchise or under applicable provisions of the City Code.

15.2 Grantee shall pay itemized costs and expenses incurred by the City in the examination and report of the proposed franchise under the City Code.

15.3 In addition, the Grantee shall promptly reimburse the City for any and all documented costs the City reasonably and necessarily incurs in response to an emergency involving any Grantee Facilities. The Grantee shall also promptly reimburse the City, upon submittal by the City of an itemized billing, for the Grantee's proportionate share of all actual, identified costs and expenses incurred by the City in repairing any City facility (including City right-of-way), or altering such City facility if at the Grantee's request, as the result of the presence of any Grantee Facilities in the Public Right-of-Way. Such costs and expenses shall include, but not be limited to, the Grantee's proportionate share of the costs of City personnel assigned to review construction plans or to oversee or engage in any work in the Public Right-of-Way as a result of the emergency and the presence of the Grantee Facilities in the Public Right-of-Way. Any and all costs will be billed on an actual cost basis. The billing may be on an annual or project basis, but the City shall provide the Grantee with the City's itemization of costs at the conclusion of each project for informational purposes.

Section 16. Hold Harmless and Indemnification

16.1 Grantee agrees to indemnify, defend, and hold harmless any City Party (as such term is defined in Section 12 above) from any and all claims, demands, liability, suits, and judgments, including costs of defense thereof, for bodily injury to persons, death, or property damage arising out of the acts or omissions of any of the Grantee Parties (as such term is defined in Section 12 above) in the use of a Public Right-of-Way pursuant to this Franchise, except to the extent caused by the sole negligence or willful misconduct of any City Party. This covenant of indemnification shall include, but not be limited to, any and all claims, demands, liability, suits, and judgments arising out of the placement of Grantee's existing utility fixtures and any and all third party claims, demands, liability, suits, and judgments arising out of any of the Grantee Parties' failure to complete all utility related adjustments, relocations, repairs, or work in accordance with this Franchise and the work plan and schedule agreed to by the City and Grantee, except to the extent caused by the sole negligence or willful misconduct of any City Party. In the event of liability for damages arising out of bodily injury to persons, death or property damage caused by or resulting from the concurrent negligence of Grantee and the City, its officers, employees and agents, Grantee's liability hereunder shall be only to the extent of Grantee's negligence.

16.2 In the event the City incurs attorneys' fees, legal expenses, or other costs to enforce the provisions of this Section 16 against Grantee, all such fees, expenses, and costs shall be recoverable from Grantee to the extent the City prevails in such enforcement action.

16.3 It is specifically and expressly understood that, solely to the extent required to enforce the indemnification, defense and hold harmless obligations contained in this Section 16, Grantee waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees. This waiver has been mutually negotiated by the parties.

16.4 The City shall give Grantee timely written notice of the matter of any claim or of the commencement of any such action, suit or other proceeding covered by the indemnification, defense and hold harmless obligations contained in this Section 16. In the event any such claim

arises, the City or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the right and duty to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully therein.

16.5 The City's permitting approval, inspection, lack of inspection, or acceptance of any work performed by the Grantee Parties in connection with work authorized on Grantee Facilities, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise, shall not be grounds for avoidance of any of the indemnification, defense and hold harmless obligations contained in this Section 16.

16.6 The indemnification, defense and hold harmless obligations contained in this Section 16 shall survive the expiration, abandonment or termination of this Franchise.

Section 17. Limitation of City Liability

17.1 The City's administration of this Franchise shall not be construed to create the basis for any liability on the part of the City Parties, except for the City's sole negligence or willful misconduct. Neither party will be liable under this Franchise for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption, loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

Section 18. Insurance

18.1 Insurance Requirements

A. Insurance Required

- i. Grantee shall procure, and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Grantee or its employees or agents. The Grantee shall pay the costs of such insurance.
- ii. The Grantee is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Grantee to comply with the insurance requirements stated herein shall constitute a material breach of this Franchise.
- iii. Each required insurance policy shall be written on an "occurrence" basis except for coverage specified in D.iii below.
- iv. Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(ies). Nothing contained in this provision shall affect and/or alter the application of any other provision contained within this Franchise.

B. Risk Assessment by Grantee

By requiring such insurance, the City shall not be deemed or construed to have assessed the risks that may be applicable to the Grantee under this Franchise, nor shall such minimum limits be construed to limit the limits available under any insurance coverage obtained by the Grantee. The Grantee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

C. Minimum Scope and Limits of Insurance. Coverage shall be at least as broad as and with limits not less than the following, which may be satisfied through a combination of primary and umbrella or excess liability coverage:

(i) General Liability

Insurance Services Office form number (CG 00 01) or its substantial equivalent covering COMMERCIAL GENERAL LIABILITY including XCU coverage: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$5,000,000 general aggregate limit.

(ii) Automobile Liability

Insurance Services Office form number (CA 00 01) covering BUSINESS AUTO COVERAGE, symbol 1 “any auto”; or the appropriate coverage provided by symbols 2, 7, 8 or 9, or its substantial equivalent for COMMERCIAL AUTOMOBILE LIABILITY covering all owned, non-owned and hired vehicles: \$1,000,000 combined single limit per accident for bodily injury and property damage if the use of motor vehicles is contemplated.

(iii) Workers’ Compensation

Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington. Qualified self-insurance is allowed.

(iv) Stop Gap/Employers Liability

Coverage shall be at least as broad as the indemnification, protection provided by the Workers’ Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the general liability policy: \$1,000,000.

D. Limits of Insurance - Construction Period

Prior to commencement of construction and until construction is complete and approved by the Grantee and the City, the Grantee shall cause the construction contractor and related professionals to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to this Franchise. The cost of such insurance shall be paid by the Grantee and/or any of the Grantee’s contractor/subcontractors. The Grantee

shall cause the construction contractor and related professionals to maintain limits no less than the following, which limits may be satisfied through a combination of primary and umbrella or excess liability coverage:

- (i) Commercial General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$5,000,000 general aggregate.
- (ii) Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage.
- (iii) If doing design or engineering work, Professional Liability, Errors & Omissions: \$1,000,000, Per Claim and in the Aggregate. Such coverage may be on a claims made basis provided the retroactive date is prior to inception of services and such coverage shall be maintained for at least two (2) years following completion of such work.
- (iv) Workers Compensation: Statutory requirements of the state of residency.
- (v) Stop Gap or Employers Liability Coverage: \$1,000,000.

E. Other Insurance Provisions

The insurance policies required in this Franchise are to contain, or be endorsed to contain, the following provisions:

- (i) All Liability Policies except Professional and Workers' Compensation.
 - a. The City, its officers, officials, and employees, shall be named as additional insureds as their interest may appear under this Franchise and with respect to liability arising out of activities performed by or on behalf of the Grantee/contractor in connection with this Franchise. Such coverage shall include Products-Completed Operations.
 - b. To the extent of the Grantee's/contractor's negligence, the Grantee's/contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, and employees. Any insurance and/or self-insurance maintained by the City, its officers, officials, employees, or agents shall not contribute with the Grantee's insurance or benefit the Grantee in any way.
 - c. The Grantee's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- (ii) All Policies
Upon receipt of notice from its insurer, Grantee shall provide the City with thirty (30) days prior written notice of cancellation of any required coverage if not replaced.

F. Acceptability of Insurers

Unless otherwise approved by the City, insurance is to be placed with insurers with a Bests' rating of no less than A-VII.

Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII.

If, at any time, the foregoing policies shall fail to meet the above requirements, the Grantee shall, upon notice to that effect from the City, promptly obtain a new policy, and shall submit the same to the City, with appropriate certificates and blanket additional insured endorsements, for approval.

G. Verification of Coverage

The Grantee shall furnish verification of insurance if requested by the City

H.

I.

18.2 Grantee shall furnish the City with original certificates and blanket additional insured endorsements evidencing the insurance requirements of the Grantee before commencement of the work.

18.3 In satisfaction of the insurance requirements set forth in this Section 18, Grantee may self-insure against such risks in such amounts as are consistent with good utility practice. Grantee shall provide the City with reasonable written evidence that Grantee is maintaining such self-insurance.

Section 19. Performance Security

19.1 Before undertaking any work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, the Grantee shall, upon the request of the City through its permit process, provide a security device in a sum to be set and approved by the City Engineer in accordance with City Code. Grantee may, upon approval of the City Engineer, provide a Franchise security device or Franchise bond to cover all work performed by Grantee under this Franchise in such amount as the City Engineer deems adequate.

Section 20. Annexation

20.1 If any Public Right-of-Way, or portion thereof, is incorporated into the limits of any city or town, it shall not be subject to the terms of this Franchise.

Section 21. Vacation

21.1 If any Public Right-of-Way, or portion thereof, is vacated, it shall not be subject to the terms of this Franchise. The City may retain a utility easement as allowed under RCW 36.87.140 when a Public Right-of-Way, or portion thereof, is vacated. The Grantee may request the City retain a utility easement; however in no case shall the City be obligated to retain such an easement. The City shall not be liable for any damages or loss to the Grantee by reason of such vacation and termination.

Section 22. Assignment

22.1 Neither this Franchise nor any interest therein shall be leased, sold, partitioned, transferred, assigned, disposed of, or otherwise subject to a change in the identity of the Grantee (each such activity, a "Transfer"), in whole or in part, in any manner, without the prior written consent of the City Council, which consent will not be unreasonably withheld, delayed or conditioned. Should any such Transfer be approved by the City, then each and every one of the provisions, conditions, regulations and requirements contained in this Franchise shall be binding upon the approved transferee beginning on the date of the Transfer, and all privileges, as well as all obligations and liabilities of the Grantee shall inure to such transferee equally as if such transferee was specifically mentioned wherever the Grantee is named herein. Notwithstanding the foregoing, Grantee may, without consent of the City, assign its interest in this Franchise to any person or entity controlling, controlled by, or under common control with Grantee as of the date of such assignment.

22.2 In the case of a Transfer to secure indebtedness, whether by mortgage or other security instrument, the City's consent shall not be required unless and until the secured party elects to realize upon the collateral. The Grantee shall provide prompt, written notice to the City, of any assignment to secure indebtedness.

22.3 Any attempt by Grantee to Transfer this Franchise in violation of this Section 22 shall constitute a material breach by Grantee.

22.4 The parties agree and acknowledge that, notwithstanding anything in this Franchise to the contrary, certain equipment deployed by Grantee in the Public Rights-of-Way pursuant to this Franchise may be owned and/or operated by Grantee's third-party wireless carrier customers ("Carriers") and installed and maintained by Grantee pursuant to license agreements between Grantee and such Carriers. Such equipment shall be treated as Grantee's Facilities for all purposes under this Franchise provided that (i) Grantee remains responsible and liable for all performance obligations under the Franchise with respect to such equipment; (ii) the City's sole point of contact regarding such equipment shall be Grantee; and (iii) Grantee shall have the right to remove and relocate the equipment.

22.5 Notwithstanding any provision in this Franchise to the contrary, Grantee shall have the right to assign this Franchise to any parent, subsidiary, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Grantee, or to any entity into which Grantee may be merged or consolidated or which purchases all or substantially all of the assets of Grantee that are subject to this Franchise.

Section 23. Termination, Revocation, and Forfeiture

23.1 If the Grantee, following written notice from the City of any breach of the Franchise and at least thirty (30) days thereafter to cure such breach: (i) defaults on any material term or condition of this Franchise and all applicable notice and cure periods have expired and such default is continuing; (ii) willfully violates or fails to comply with any of the provisions of this Franchise; or, (iii) through willful misconduct or gross negligence fails to heed or comply with any notice

given the Grantee by the City under the provisions of this Franchise, then the Grantee shall, at the election of the City Council, forfeit all rights conferred hereunder and the Franchise may be terminated by the City Council. Grantee may terminate this Franchise for convenience, with thirty (30) days written notice to the City. Upon termination for any such cause, all rights of the Grantee granted hereunder or under any right-of-way use permit shall cease, and the Grantee shall within sixty (60) days of such termination remove or, with approval of the City Engineer, abandon in place all of the Grantee Facilities from the Public Rights-of-Way in accordance with Section 14 above.

Section 24. Remedies to Enforce Compliance; No Waiver

24.1 In lieu of termination, revocation or forfeiture as provided in Section 23, and without prejudicing any of its other legal rights and remedies, the non-defaulting party may elect to obtain an order from the Superior Court or other court, tribunal, or agency having competent jurisdiction compelling the non-defaulting party to comply with the provisions of this Franchise and to recover damages and costs incurred by the non-defaulting party by reason of the non-defaulting party's failure to comply. In addition to any other remedy provided herein, the non-defaulting party reserves the right to pursue any remedy to compel or force the non-defaulting party and/or its permitted successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the non-defaulting party shall not prevent the non-defaulting party from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

24.2 Failure of the non-defaulting party to exercise any rights or remedies under this Franchise shall not constitute a waiver of any such right or remedy and shall not prevent the non-defaulting party from pursuing such right or remedy at any future time.

24.3 Nothing in this Franchise is or was intended to confer third-party beneficiary status on any person or entity to enforce the terms of this Franchise.

Section 25. City Ordinances and Regulations - Reservation of Police Power

25.1 Nothing in this Franchise shall restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of the Franchise, including, but not limited to, any ordinances adopted under the City's police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations, including design standards, and utility accommodation policies, the location, elevation, manner of construction, and maintenance of any Grantee Facilities located within any Public Right-of-Way, and the Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law. In the event of a conflict between the regulatory provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.

Section 26. Eminent Domain, Powers of the People

26.1 This Franchise is subject to the power of eminent domain and the right of the City Council or the people acting for themselves through initiative or referendum to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 27. Survival and Force Majeure

27.1 Until such time as all of the Grantee Facilities have been removed from the Public Rights-of-Way in accordance with Section 14.1 above, or have been deactivated or abandoned in place in accordance with Sections 14.2 and 14.3 above, all of the provisions, conditions and requirements contained in the following sections of this Franchise shall survive the expiration, revocation, forfeiture or early termination of the Franchise: (i) Section 4 (Regulation of Use; Permits Required); (ii) Section 5 (Emergency Work); (iii) Section 6 (Compliance with Applicable Laws; Performance Standards); (iv) Section 7 (Restoration of Public Rights-of-Way); (v) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (vi) Section 10 (Undergrounding of Grantee Facilities); (vii) Section 12 (Hazardous Materials); (viii) Section 13 (Dangerous Conditions, Authority for City to Abate); (ix) Section 14 (Removal of Grantee Facilities; Abandonment of Grantee Facilities); (x) Section 15 (Fees, Compensation for Use of Public Rights-of-Way and Taxes); (xi) Section 16 (Hold Harmless and Indemnification); (xii) Section 17 (Limitation of City Liability); (xiii) Section 18 (Insurance); (xiv) Section 19 (Performance Security); and, (xv) Section 24 (Remedies to Enforce Compliance; No Waiver).

27.2 After such time as all Grantee Facilities have been either removed from the Public Rights-of-Way or abandoned/deactivated in place to the City's satisfaction pursuant to Section 14 above, only the following provisions shall survive the expiration or earlier termination of the Franchise: (i) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (ii) Section 12 (Hazardous Materials); (iii) Section 16 (Hold Harmless and Indemnification); and (iv) Section 17 (Limitation of City Liability).

27.3 If the Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of a Force Majeure, then Grantee's performance shall be excused during a Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Grantee shall promptly perform its obligations in an orderly and expedited manner using industry accepted best practices. Grantee's performance shall not be excused by economic hardship nor by the misfeasance or malfeasance of its directors, officers, or employees.

27.4 For the purposes of this Franchise, "Force Majeure" means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen) that delays or prevents performance by the Grantee of any of its obligations under this Franchise, but only to the extent that and for so long as the event or circumstance is beyond the reasonable control of the Grantee and shall include, without limitation; all of the following events and circumstances: (i) acts of nature, including volcanic eruption, landslide, earthquake, flood, lightning, tornado or other unusually severe storm or environmental conditions, perils of the sea, wildfire or any other natural disaster; (ii) acts of public enemies, armed conflicts, act of foreign enemy, acts of terrorism (whether domestic or foreign, state-sponsored or otherwise), war (whether declared or undeclared), blockade,

insurrection, riot, civil disturbance, revolution or sabotage; (iii) any form of compulsory government actions, acquisitions or condemnations, changes in applicable law, export or import restrictions, customs delays, rationing or allocations; (iv) accidents or other casualty, damage, loss or delay during transportation, explosions, fire, epidemics, quarantine or criminal acts; (v) inability, after the use of commercially reasonable efforts, to obtain from any governmental authority any permit, approval, order, decree, license, certificate, authorization or permission to the extent required by applicable law; (vi) inability, after the use of commercially reasonable efforts, to obtain any consent or approval required by the Franchise; and, (viii) third-party litigation contesting all or any portion of the Franchise or Grantee's rights under this Franchise.

Section 28. Governing Law and Stipulation of Venue

28.1 This Franchise and all use of Public Rights-of-Way granted herein shall be governed by the laws of the State of Washington, unless preempted by federal law. Any action relating to this Franchise shall be brought in the Superior Court of Washington for King County, Maleng Regional Justice Center, or in the case of a federal action, the United States District Court for the Western District of Washington at Seattle, unless an administrative agency has primary jurisdiction.

Section 29. Severability

29.1 If any section, sentence, clause, phrase or provision of this Franchise or the application of such provision to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, phrase or provision of this Franchise nor the application of the provision at issue to any other person or entity.

Section 30. Notice and Emergency Contact

30.1 Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

CITY OF SEATAC
Attn.: Public Works Department
4800 S. 188th Street
SeaTac, WA 98188-8605

New Cingular Wireless PCS, LLC
Attn.: Network Real Estate Administration
Re: Cell Site #: _____
Name: _____ (WA)
Fixed Asset #: _____
575 Morosgo Drive NE
Atlanta, GA 30324

WITH A COPY TO:

City of SeaTac
Attn.: Legal Department
4800 S. 188th Street
SeaTac, WA 98188

WITH A COPY TO:

New Cingular Wireless PCS, LLC
Attn.: AT&T Legal Dept. - Network Operations
Re: Cell Site #: _____
Name: _____ (WA)
Fixed Asset #: _____

208 S. Akard Street
Dallas, TX 75202-4206

The Grantee shall also provide the City a current emergency contact name (or title) and phone number available 24-hours a day, seven days a week. The Grantee shall promptly notify the City of any change in the notice address or emergency contact (or title) and phone number.

EMERGENCY CONTACT:

Jared Chapin, Mobility Operations Manager

Telephone No.: (800) 832-6662

Email:

Section 31. Acceptance

31.1 Within ninety (90) days after the passage and approval of this Franchise by the City Council, the Franchise may be accepted by the Grantee by its filing with the City Council an unconditional written acceptance thereof. Failure of the Grantee to so accept the Franchise within said period of time shall be deemed a rejection thereof by the Grantee, and the rights and privileges herein granted shall automatically cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

Section 32. Effective Date

32.1 This Franchise shall take effect, if at all, on the date on which the last of the following conditions has been met (the "Effective Date"): (i) ten (10) days have passed since the City Manager executed this Franchise, or this ordinance was otherwise enacted; (ii) the Grantee executes a copy of this Franchise and returns it to the City Council within the time provided in Section 31 above; (iii) the Grantee presents to the City acceptable evidence of insurance as required in Section 18 above; and (iv) the Grantee pays all applicable fees as set forth in Section 15 above.

ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, New Cingular Wireless PCS, LLC covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the City of SeaTac, SeaTac Municipal Code, and this Franchise.

DATED this _____ day of June, 2018.

**NEW CINGULAR WIRELESS PCS,
LLC**

Printed Name: _____
Title: _____

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the Grantee returned a signed copy of this Franchise to the City Council within the time provided in Section 31; (2) the Grantee has presented to the City acceptable evidence of insurance as required in Section 18 of this Franchise; and, (3) the Grantee has paid all applicable processing costs and fees as set forth in Section 15 of this Franchise.

ORDINANCE NO. _____

AN ORDINANCE of the City Council of the City of SeaTac, Washington granting a non-exclusive franchise to Mobilitie, LLC, authorizing limited use of the public road rights-of-way in the City of SeaTac, Washington.

WHEREAS, Mobilitie, LLC ("Mobilitie") has applied to the City for a non-exclusive franchise to construct, maintain, operate, replace and repair telecommunications facilities in, on, across, over, along, under, and/or through public rights-of-way within the City; and

WHEREAS, Section 35A.47.040 RCW and Chapter 5.25 of the SeaTac Municipal Code specify requirements for franchises in the City of SeaTac rights-of-way; and

WHEREAS, a franchise is a legislative authorization to use public rights-of-way, however, actual construction and activities in the rights-of-way will also be subject to approved permits after review of specific plans; and

WHEREAS, the SeaTac City Council held a public hearing on June 12, 2018, to solicit comments from the public and to consider whether to grant the requested franchises; and

WHEREAS, it has been found to be in the public interest that a franchise, authorizing use of public rights-of-way for wireless telecommunications facilities, be granted;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON, DO ORDAIN as follows:

Section 1. The City Council hereby grants a telecommunications franchise to Mobilitie, LLC, authorizing limited use of the public road rights-of-way as set forth in the Franchise Agreement attached as Exhibit A.

Section 2. The City Manager is authorized to execute the Franchise Agreement in substantially similar form as attached hereto as Exhibit A.

Section 3. This Ordinance shall be in full force and effect five (5) days after passage and publication as required by law.

ADOPTED this _____ day of _____, 2018, and signed in authentication thereof on this _____ day of _____, 2018.

CITY OF SEATAC

Michael Siefkes, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:

Mary E. Mirante Bartolo, City Attorney

[Effective Date: _____]

[Small Cell Franchises]

EXHIBIT A

After Recording Return to:

City of SeaTac
Attn.: City Clerk's Office
4800 S. 188th Street
SeaTac, WA 98188-8605

Grantor:	City of SeaTac
Grantee:	Mobilitie, LLC
Tax Account No:	Not Assigned
Legal Description:	City of SeaTac
Ref. # of Docs. Affected:	N/A
Document Title:	An Ordinance of SeaTac City Council Granting a Non-exclusive Franchise Authorizing Limited Use of Public Road Rights-of-Way in the City of SeaTac, Washington to Mobilitie, LLC

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Section 1. Grant of Franchise

1.1 Pursuant to Sections 35A.11.020 and 35A.47.040 of the Revised Code of Washington (“RCW”) the City of SeaTac, a political subdivision of the State of Washington (the “City”), hereby grants to Mobilitie, LLC, a Nevada limited liability company, (the “Grantee”), a non-exclusive franchise to use those portions of the City’s rights-of-way described in Section 1.3 below, for the purposes described in Section 1.2 below, subject to compliance with all applicable provisions of the SeaTac Municipal Code (“SMC” or “City Code”), City policies and the terms and conditions contained in this franchise ordinance (the “Franchise”).

1.2 This Franchise grants the Grantee the right, privilege and authority to use portions of the Public Rights-of-Way (as such term is defined below) of the City for the sole purposes of constructing, digging, maintaining, operating, replacing, upgrading, removing, restoring and repairing its wireless telecommunications facilities and uses incidental thereto (the “Permitted Use”) and for no other purpose or use whatsoever. Grantee hereby warrants that it expects to provide the following services within the City: small cell network consisting of a collection of interrelated Small Cell Facilities designed to deliver personal wireless services. The term “Public Rights-of-Way” or “Rights-of-Way” as used in this Franchise shall mean all public streets, roads, ways, or alleys of the City as now or hereafter laid out, platted, dedicated or improved. Pursuant to this Franchise, the Grantee is authorized to install, locate, construct, operate, maintain, use, replace, restore, upgrade and/or remove such equipment and facilities as may be reasonably necessary or convenient for the conduct of the Permitted Use (the “Grantee Facilities”), in, on, across, over, along, under or through certain Public Rights-of-Way of the City, subject to all applicable provisions of the SeaTac Municipal Code (including any City Engineering Standards), the City’s Comprehensive Plan, Sections 35A.11.020 and 35A.47.070 RCW, and the terms and conditions of City right-of-way use permits issued pursuant to the SMC and Section 4 of this Franchise. This Franchise merely authorizes the Grantee to occupy and use the Public Rights-of-Way at issue, and does not transfer, convey or vest any easement, title, servitude, or other real property interest in or to any Public Right-of-Way or portion thereof in or to the Grantee.

1.3 This Franchise covers all Public Rights-of-Way located within the City of SeaTac as now or hereafter laid out, platted, dedicated or improved.

Section 2. Non-exclusive Franchise

2.1 This Franchise is granted upon the express condition and understanding that it shall be a non-exclusive franchise which shall not in any manner prevent or hinder the City from granting to other parties, at other times and under such terms and conditions as the City, in its sole discretion, may deem appropriate, other franchises or similar use rights in, on, to, across, over, upon, along, under or through any Public Rights-of-Way. Owners, whether public or private, of any authorized facilities or equipment installed in, on, across, over, along, under, and/or through a Public Right-of-Way prior to the construction and/or installation of Grantee’s Facilities in the same location, shall have preference as to positioning and location of their facilities. The position and location of all Grantee’s Facilities in the Public Rights-of-Way shall be subject to the authority of the City Engineer.

2.2 This Franchise shall in no way prevent, inhibit or prohibit the City from using any of the Public Rights-of-Way covered or affected by this Franchise, nor shall this Franchise affect the City's jurisdiction, authority or power over any of them, in whole or in part. The City expressly retains its power to make or perform any and all changes, relocations, repairs, maintenance, establishments, improvements, dedications, or vacations of, or to any of the Public Rights-of-Way as the City may, in its sole and absolute discretion, deem fit, including the dedication, establishment, maintenance and/or improvement of new Public Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 3. Term; Early Termination

3.1 The initial term of the Franchise shall be for a period of approximately five (5) years (the "Term"), beginning on the Effective Date (as such term is defined in Section 32 of this Franchise) of the Franchise, and continuing until June 30, 2023 (the "Term Expiration Date"), unless earlier terminated, revoked or modified pursuant to the provisions of this Franchise.

3.2 If any federal, state, or local laws or regulations and any binding judicial interpretations thereof (collectively, "Laws") that govern any aspect of the rights or obligations of the parties under this Franchise shall change after the Effective Date and such change makes any aspect of such rights or obligations inconsistent with the then-effective Laws, then the parties agree to promptly reopen the terms of this Franchise in order to make amendments as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.

3.3 Grantee may terminate the Franchise for any reason or no reason in Grantee's sole discretion upon thirty (30) days written notice to the City, in which case Grantee shall remove Grantee Facilities within ninety (90) days of termination of the Franchise or, with the approval of the City Engineer, abandon in place such equipment, as provided in Section 14.

Section 4. Regulation of Use; Permits Required

4.1 The installation, location, maintenance, operation, relocation, removal or any other work related to any of the Grantee Facilities occurring in, on, across, over, along, under, and/or through any Public Right-of-Way covered by this Franchise, shall be performed in a safe and workmanlike manner, in such a way as to minimize interference with the free flow of traffic and the use of adjacent property, whether such property is public or private.

4.2 The Grantee shall not commence any work within Public Rights-of-Way until a right-of-way use permit authorizing such work has been issued by the City pursuant to the SMC. In addition to any standards of performance imposed by this Franchise, any and all work performed by Grantee pursuant to this Franchise shall be performed in accordance with all City Codes and standards applicable to such work, including the City-approved plans and specifications for the work, and the terms and conditions of any right-of-way use permit and/or other permits and/or approvals required under the SMC in order to accomplish the work (e.g., lane closure or road detour permits). Grantee understands and acknowledges that some or all of Grantee's activities may require additional project permits and approvals under City land use codes and development regulations, and Grantee accepts full responsibility for obtaining and complying with same.

4.3 In addition to any criteria set forth in Chapter 5.25 of the SMC, the City Engineering Standards, and the City's utility accommodation policies, in reviewing the Grantee's application for any right-of-way use permit pursuant to this Franchise, the City Engineer may, but is not required to, apply the following criteria in reviewing proposed utility routes and in the issuance, conditioning, or denial of such permit:

- (i) the capacity of the Public Rights-of-Way at issue to accommodate the proposed Grantee Facilities;
- (ii) the capacity of the Public Rights-of-Way at issue to accommodate additional utility, cable, telecommunications, or other public facilities if the right-of-way use permit is granted;
- (iii) the damage or disruption, if any, to public or private facilities, improvements, service, travel, or landscaping if the right-of-way use permit is granted;
- (iv) the public interest in minimizing the cost and disruption of construction within the Public Rights-of-Way at issue, including, but not limited to, coordination with future utility installation or City projects;
- (v) recent and/or proposed construction and/or improvements to the Public Rights-of-Way at issue;
- (vi) the availability of alternate routes, locations, and/or methods of construction or installation for the proposed Grantee Facilities, including, but not limited to, whether other routes are preferred; and
- (vii) whether the Grantee has received all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies with jurisdiction over the activities proposed by the Grantee.

4.4 Prior to commencing any work in a critical area as defined by City Code, the Grantee shall comply with all applicable requirements of the City's critical areas regulations, and shall obtain any and all required permits and approvals. The granting of this Franchise shall in no way relieve the Grantee from its responsibility for avoiding "take" of any threatened or endangered species as defined by the Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., as amended, in the performance of any work authorized by this Franchise and/or any right-of-way use permits.

Section 5. Emergency Work

5.1 Should any of the Grantee Facilities in the Public Rights-of-Way break or become damaged such that an immediate danger to the property, life, health or safety of any individual is presented, or should any site upon which the Grantee is engaged in construction or maintenance activities pursuant to this Franchise for any reason be in such a condition that an immediate danger to the property, life, health or safety of any individual is presented, the Grantee shall immediately take such measures as are reasonably necessary to repair the Grantee Facilities at issue or to remedy the dangerous conditions on the site at issue so as to protect the property, life, health or safety of individuals. In the event of an emergency described above, the Grantee may take corrective action immediately, without first applying for or obtaining any permits or other authorizations that might otherwise have been required by the City Code and/or this Franchise. However, the emergency provisions contained in this Section 5 shall not relieve the Grantee from its obligation to obtain

any permits necessary for the corrective actions taken, and the Grantee shall apply for all such permits by the next business day after the emergency. In the event of any emergency described in this Section 5, the Grantee shall also notify the City of the emergency as soon as may be reasonably feasible after the Grantee discovers the emergency (such notice may be telephonic or email communication), but no later than the next business day.

Section 6. Compliance with Applicable Laws; Performance Standards

6.1 The Grantee shall at all times during the Term of the Franchise undertake the Permitted Use in compliance with all federal, state and local laws, rules and regulations (including, but not limited to, the City's comprehensive plan, zoning code, and other development regulations) that are applicable to any and all work or other activities performed by Grantee pursuant to or under authority of the Franchise.

6.2 During any period of installation, maintenance, operation, relocation, removal or any other work related to any of the Grantee Facilities subject to this Franchise, Grantee shall use industry accepted best-practices to ensure that, to the extent reasonably feasible, such work does not impede: (i) public use of the Public Rights-of-Way at issue for vehicular and pedestrian transportation; (ii) construction and/or maintenance within Public Rights-of-Way and other authorized facilities, equipment and improvements; (iii) the operation, maintenance or improvement by the City of the Public Rights-of-Way or other public property impacted by Grantee's work; or (iv) use of the Public Rights-of-Way for other governmental purposes.

6.3 During any periods of construction within the Public Rights-of-Way, the Grantee shall at all times post and maintain proper barricades and comply with all applicable safety regulations as required by the City Code, the City Engineering Standards, or the laws of the State of Washington, including, but not limited to, RCW 39.04.180 for the construction of trench safety systems.

6.4 Before the Grantee commences any work under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys, Grantee shall reference all such monuments and markers using a method or methods approved by the City Engineer, and a complete set of reference notes for monument and other ties shall be filed with the City prior to the commencement of construction. Reference points shall be so located that they will not be disturbed during Grantee's operations. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, as directed by the City Engineer, and to federal, state and local standards. All costs incurred pursuant to this Section 6.4 shall be borne by Grantee.

6.5 If the Grantee shall at any time plan to make excavations in any area covered by the Franchise, the Grantee shall, upon receipt of a written request to do so, provide an opportunity for the City and/or any other grantees or authorized users of the Public Right-of-Way at issue to participate in such excavation, and shall coordinate the location and installation of its Grantee Facilities with the City or such other grantees or authorized entities, PROVIDED THAT, Grantee need not permit the City or any other parties to participate in an excavation if the City Engineer reasonably determines that any of the following are true:

- (i) such joint use would unreasonably delay the performance of Grantee's work;
- (ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions for accomplishing such joint use; or
- (iii) valid safety reasons exist for denying a request for such joint use.

6.6 If the Grantee shall at any time plan to include communication facilities in furtherance of the Permitted Use, the Grantee shall provide an opportunity for the City to enter into negotiations for shared use of such communication facilities, and shall coordinate negotiation of shared use of its communication facilities with the City if such shared use is reasonably feasible; PROVIDED THAT, Grantee need not permit the City to participate in shared use of communication facilities if any of the following are true, in the reasonable judgment of the City and the Grantee:

- (i) such shared use would unreasonably delay the performance of Grantee's work;
- (ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions, including but not limited to allocation of costs amongst various parties, for accomplishing such shared use;
- (iii) valid safety reasons exist for denying a request for such shared use and/or the proposed facilities of the third party are in conflict with the best practices employed by the Grantee; or
- (iv) the installation of communication facilities is for the purpose of an emergency action to protect the property, life, health or safety of individuals.

Section 7. Restoration of Public Rights-of-Way

7.1 Promptly after completing any work in, on, under, over, across or upon any Public Rights-of-Way, including, but not limited to any excavation, installation, construction, relocation, maintenance, repair or removal of any Grantee Facilities, Grantee shall, at Grantee's sole cost and expense, restore the Public Rights-of-Way and any adjacent affected areas to a like condition or better, or as otherwise required by the City Engineering Standards. Grantee shall also comply with any and all restoration conditions contained in applicable permits or approvals, and the City Engineer shall have final authority to determine in each instance of restoration whether adequate restoration has been performed, reasonable wear and tear excepted.

Section 8. Record Plans, Record Drawings, and Records of Grantee Facility Locations

8.1 The Grantee shall maintain adequate records to document obligations performed under this Franchise. The Grantee agrees and covenants that it shall, within 120 days after completion of any construction project involving a Public Right-of-Way, provide to the City, at no cost to the City, a copy of all as-built plans, maps and records revealing the approximate final locations and conditions of the Grantee Facilities located within such Public Right-of-Way. Additionally, the City may, at any time, deliver a written request to the Grantee for copies of maps and records showing the approximate location of all or any portion of the Grantee Facilities. In such event, the Grantee shall, within thirty (30) days after receipt of the request, provide the City, at no cost to the City, with copies of the requested record plans, record drawings and other records within a reasonable time after receiving the City's request for same. The City shall have the right to review the Grantee's records regarding the subject matter of this Franchise at reasonable times, upon

reasonable notice. The right to review records shall last for two (2) years from the expiration or earlier termination of this Franchise. In addition to the maps and records of the Grantee Facility locations, the Grantee shall provide the City, upon the City's request, with copies of records of construction, maintenance, operation, inspections, or regulatory compliance for all Grantee Facilities subject to this Franchise as may be deemed necessary by the City, in its sole discretion, to manage the city roads, Public Rights-of-Way, or other property, or to protect the public health, safety, and welfare. Nothing in this Section 8 shall be construed to require Grantee to violate state or federal law concerning customer privacy, nor shall this Section 8 be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

8.2 If the Grantee considers any portion of its records provided to the City, whether in electronic or hard copy form, to be protected from disclosure under law, the Grantee shall clearly identify any specific information that it claims to be confidential or proprietary. If the City receives a request under the Public Records Act, Chapter 42.56 RCW, to inspect or copy the information so identified by the Grantee and the City determines that release of the information is required by the Act or otherwise appropriate, the City's sole obligations shall be to notify the Grantee: (a) of the request; and, (b) of the date that such information will be released to the requester unless the Grantee obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Grantee fails to timely obtain a court order enjoining disclosure, the City will release the requested information on the date specified. The City has, and by this section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the Act. The City shall not be liable to the Grantee for releasing records not clearly identified by the Grantee as confidential or proprietary. The City shall not be liable to the Grantee for any records that the City releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

Section 9. Relocation of Grantee Facilities

9.1 The Grantee agrees and covenants that it will promptly, and with as much written notice as is feasible under the circumstances (but in event less than one hundred twenty (120) days), at its sole cost and expense, protect, support, temporarily disconnect, relocate, or remove from the Public Rights-of-Way any Grantee Facilities when the City Engineer determines after full and fair consideration that such a relocation is necessary for any of the following reasons: (i) traffic conditions; (ii) public safety; (iii) dedications of new Public Rights-of-Way and the establishment and/or improvement thereof; (iv) widening and/or improvement of existing Public Rights-of-Way; (v) vacations of Public Rights-of-Way; (vi) freeway construction; (vii) change or establishment of road grade; or, (viii) the construction of any public improvement or structure by any governmental agency acting in a governmental capacity, PROVIDED that the Grantee shall generally have the privilege to temporarily bypass, in the authorized portion of the same Public Right-of-Way, upon approval by the City Engineer, any Grantee Facilities required to be temporarily disconnected or removed; AND FURTHER PROVIDED that if the City pays for or reimburses the relocation costs of another wireless telecommunications provider, under substantially similar circumstances, it shall pay for or reimburse a proportionate share of Grantee's relocation costs. In the event of a conflict between this Section 9 and the specific terms of any existing real property interests and rights owned by the Grantee, such as a utility easement or other servitude, the terms of this Section 9 shall be subject to the specific terms of the real property interests and rights owned by

the Grantee unless and until those rights are extinguished or amended: (i) by mutual agreement; (ii) pursuant to a judicial condemnation order; (iii) by negotiated sale of said property rights between Grantee and the City in-lieu of condemnation; or, (iv) by any other lawful means.

9.2 Upon the request of the City and in order to facilitate City improvements to Public Rights-of-Way, the Grantee agrees to locate and, if reasonably determined necessary by the City, to excavate and expose, at its sole cost and expense, portions of the Grantee Facilities for inspection so that the location of the facilities may be taken into account in the improvement design.

9.3 Grantee shall, upon reasonable prior written request of any non-governmental person or entity holding a permit issued by the City to move any structure, temporarily move its facilities to allow the moving of such structure, PROVIDED: (i) Grantee may impose a reasonable charge on the permittee for the movement of Grantee's Facilities and such person or entity agrees in writing to pay such charge; (ii) Grantee is granted a permit by the City for such work if a permit is needed; and, (iii) Grantee is given not less than thirty (30) business days notice to arrange for such temporary relocation, EXCEPT in any case where the City Engineer determines Grantee Facilities are not reasonably movable.

9.4 Where the City imposes conditions or requirements on a third party development requiring the relocation of any Grantee Facilities, the City shall not be responsible for paying any costs related to such relocation. Nothing in this Franchise is intended or shall be construed to prohibit the Grantee from assessing on such person or entity, other than the City, the costs of relocation as a condition of such relocation.

9.5 To assist Grantee with anticipating relocations of Grantee Facilities related to City improvements to the Public Rights-of-Way, upon request, the City will provide the Grantee with copies of the most recently adopted Six-Year Transportation Improvement Program and Annual Construction Program.

9.6 If the City determines that a City project necessitates the relocation of existing Grantee Facilities, the parties shall proceed as follows:

- (i) The City shall provide the Grantee at least one hundred twenty (120) days written notice prior to the commencement of the construction phase of the City project at issue, PROVIDED, that under the following circumstances the City need only provide the Grantee with written notice as soon as may be reasonably practicable: (a) in the event of an emergency posing a threat to public safety, health or welfare; (b) in the event of an emergency beyond the control of the City and which will result in adverse financial consequences to the City; or, (c) where the need to relocate the Grantee Facilities could not reasonably have been anticipated by the City.
- (ii) The City shall provide the Grantee with copies of pertinent portions of the designs and specifications for the City project as well as a proposed new location for the Grantee Facilities at least ninety (90) days prior to the commencement of the construction phase of the City project to enable Grantee to promptly relocate such Grantee Facilities. Upon request of the Grantee, thirty percent (30%), sixty percent (60%), and ninety-percent (90%) design plans shall be provided to the Grantee. The City and the Grantee

shall, upon the request of either party, meet to discuss the plans, specifications and schedule of the City project at issue at a mutually agreed time in a location determined by the City.

- (iii) After receipt of such notice and such plans and specifications, the Grantee shall complete relocation of its facilities within the Public Right-of-Way at least ten (10) days prior to commencement of the construction phase of the City project at no charge, cost or expense to the City, unless otherwise agreed to within a separate agreement executed by both Parties. Relocation shall be accomplished in such a manner as to accommodate the City's project. In the event of an emergency, the Grantee shall relocate the Grantee Facilities at issue within a time period reasonably specified by the City Engineer.
- (iv) The City and the Grantee may, for each individual City project, enter into an agreement for costs incurred by the City for relocation of Grantee's Facilities and associated work tied to the relocation.
- (v) In the event of an emergency, the Grantee shall relocate the Grantee Facilities at issue within a time period reasonably specified by the City Engineer.

9.7 The Grantee may, after receipt of written notice requesting a relocation of any Grantee Facilities in accordance with Section 9.6, submit to the City proposed written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives are suitable to accommodate the City project. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration but the final decision is the sole discretion of the City. Where, upon the request of the Grantee, the City incurs additional costs in performing any maintenance, operation, or improvement of or to public facilities due to measures taken by the City to avoid damaging or to otherwise accommodate one or more Grantee Facilities, the Grantee shall reimburse the City for the full amount of such additional costs promptly upon receiving the City's invoice for same. In the event the City ultimately determines that there is no reasonable or feasible alternative to relocation, the Grantee shall relocate the Grantee Facilities at issue as otherwise provided in this Section 9.

9.8 The provisions of this Section 9 shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of any Grantee Facility by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay any City projects. The Grantee shall provide certified record drawings (or as-built drawings) detailing the location of Grantee's Facilities within the Public Right-of-Way required to be relocated or removed for the purpose of the non-City project.

9.9 Should relocation be required for a City project pursuant to this Section 9, the Grantee shall be responsible for timely relocation of the Grantee Facilities at issue and the coordination of such relocation with the City (or the City's contractor for the City project). The Grantee shall be fully responsible for the costs of any delays to City projects resulting from relocations of any Grantee Facilities. The Grantee shall indemnify, defend and hold harmless the City from and against any and all claims, lawsuits, or damages, including those brought by a contractor of the City engaged

in a City project, arising out of or caused in whole or in part by the location or relocation of one or more Grantee Facilities, as more fully set forth in Section 16 of this Franchise, except to the extent such claims or damages may be due to or caused by the sole negligence or willful misconduct of the City or its employees, contractors or agents.

Section 10. Undergrounding of Grantee Facilities

10.1 The undergrounding requirements of this Section 10 shall apply where the Grantee Facilities consist of cable or any other facilities, equipment or systems which are reasonably capable of being placed underground. Where the Grantee Facilities consist of antennae or other facilities, equipment or systems which are required to remain above ground in order to be functional, the terms and conditions of this Section 10 shall not apply.

10.2 In any area of the City in which there are no aerial facilities other than antennae or other facilities required to remain above ground in order to be functional, or in any area in which telephone, electric power wires or other cables have been placed underground, the Grantee shall not be permitted to erect poles or to run or suspend wires, cables or other similar facilities thereon, but shall lay all such wires, cables or other facilities underground in the manner required by the City. The Grantee acknowledges and agrees that, even if the City does not require the undergrounding of all or any portion of the Grantee Facilities at the time the Grantee applies for the applicable right-of-way use permit, the City may, at any time in the future, and in the City’s reasonable discretion, require the Grantee to convert all or any portion of the aerial Grantee Facilities to underground installation at the Grantee’s sole cost and expense.

10.3 Whenever the City requires the undergrounding of the aerial facilities in any area of the City, the Grantee shall underground the aerial Grantee Facilities in that area of the City in the manner specified by the City, concurrently with the other affected facilities. Where other facilities are present or proposed and involved in the undergrounding project, the Grantee shall only be required to pay its fair share of common costs borne by all facilities, in addition to the costs specifically attributable to the undergrounding of the Grantee Facilities. “Common costs” shall include necessary costs not specifically attributable to the installation or undergrounding of any particular facility, such as costs for common trenching and utility vaults. “Fair share” shall be determined for a project on the basis of the number and size of the Grantee Facilities being installed or undergrounded in comparison to the total number and size of all other utility facilities being installed or undergrounded.

Section 11. Maintenance of Grantee Facilities

11.1 The Grantee shall maintain all Grantee Facilities in good condition and repair, in accordance with industry accepted best practices. This also includes any graffiti removal from Grantee’s Facilities.

11.2 The Grantee shall take necessary steps to maintain a reasonably clear area around all Grantee Facilities installed above-ground within Public Rights-of-Way. A minimum of five (5) feet of clearance will be maintained around each such object so as to provide clear visibility from the roadway for City operations and maintenance. Prior to using any chemical sprays within the

Public Rights-of-Way to control or kill weeds and brush, the Grantee must obtain the City's permission. The City may limit or restrict the types, amounts, and timing of applications provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.

Section 12. Hazardous Materials

12.1 The City understands and agrees that the Permitted Use contemplated by the Grantee involves the use by Grantee of certain chemicals and/or materials within the Public Rights-of-Way that are classified as hazardous or otherwise harmful to life, health and/or safety (any such chemical or material, a "Hazardous Material") under one or more applicable federal, state or local laws, rules, regulations or ordinances (collectively, the "Hazardous Materials Laws"). The Grantee shall be permitted to use such Hazardous Materials within the Public Rights-of-Way as are reasonably necessary for the Grantee's conduct of the Permitted Use and which are customary for the industry in which the Grantee is engaged, PROVIDED, however, that the Grantee's use of any such Hazardous Materials within the Public Rights-of-Way shall at all times be undertaken in full compliance with all Hazardous Materials Laws, including any orders or instructions issued by any authorized regulatory agencies.

12.2 The Grantee covenants and agrees that it will neither cause nor permit, in any manner, the release, seepage or spill of any Hazardous Material upon, into, under, over, across or through any Public Right-of-Way or property adjacent thereto, whether public or private, in violation of any applicable Hazardous Materials Law. Any such release, seepage or spill of any Hazardous Material within the Public Rights-of-Way that is in violation of any applicable Hazardous Materials Law and is caused by Grantee or its directors, officers, agents, employees or contractors, is, referred to as "Release."

12.3 Should a Release occur, the Grantee shall immediately upon receiving notice thereof provide written notice of the Release to the City and the Washington State Department of Ecology. The Grantee agrees it shall indemnify, defend and hold the City, its elected and appointed officials, employees, agents and volunteers (collectively, the "City Parties") harmless from and against any and all claims, lawsuits, actions, judgments, awards, penalties, fines and other damages (including, but not limited to, reasonable attorneys' fees and costs) incurred or suffered by any of the City Parties, to the extent the Release is caused by any act or omission of Grantee or its directors, officers, agents, employees or, contractors (collectively, the "Grantee Parties") within Public Rights-of-Way or property adjacent thereto, whether public or private. Grantee shall be responsible, at its sole cost and expense, for completely cleaning up and remediating, as required by any governmental agency having jurisdiction, any Release caused by any Grantee Party within Public Rights-of-Way or property adjacent thereto, whether public or private. Notwithstanding the Grantee's obligation to completely remediate same, in the event of any Release by a Grantee Party, the City may (but need not), in the interest of protecting the health, safety, welfare and property of the public, immediately take whatever actions it deems necessary or advisable, in its sole discretion, to contain, clean up or remediate the Release at issue. Should the City choose to take any actions pursuant to the preceding sentence, the City shall be entitled to repayment from the Grantee of any and all reasonable costs and expenses incurred by the City in performing such actions.

12.4 Should the Grantee cause a Release as described in Section 12.3 above, failure to promptly comply with all orders or instructions lawfully issued by any authorized regulatory agencies regarding clean-up and remediation shall constitute a material breach of this Franchise, and the City Council may terminate or suspend the Franchise in accordance with Section 23.

Section 13. Dangerous Conditions, Authority for City to Abate

13.1 Whenever the Grantee's excavation, construction, installation, relocation, maintenance, repair, abandonment, or removal of Grantee Facilities authorized by this Franchise has caused or contributed to a condition that, in the reasonable opinion of the City Engineer, substantially impairs the lateral support of the adjoining road or public or private property, or endangers the public, an adjoining public place, road facilities, City property or private property, the City Engineer may direct the Grantee to remedy the condition or danger to the satisfaction of the City Engineer, within a specified period of time and at the Grantee's sole cost and expense.

13.2 In the event that the Grantee fails or refuses to promptly take the actions directed by the City Engineer, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, in accordance with Section 13.1 above, the City may enter upon the property and take such actions as are reasonably necessary to protect the public, the adjacent roads, or road facilities, or to maintain the lateral support thereof, or actions necessary to ensure the public safety, and the Grantee shall be liable to the City for actual costs and expenses incurred by the City in performing such actions.

Section 14. Removal of Grantee Facilities; Abandonment of Grantee Facilities

14.1 In no event may all or any portion of the Grantee's Facilities located in, on, under, over, across or through the Public Right-of-Way be abandoned or temporarily abandoned in place by the Grantee. In the event of any unauthorized abandonment of all or any portion of the deactivated or abandoned Grantee Facilities by the Grantee, the City may, at its election, and in addition to any other remedies or enforcement options available to the City under this Franchise, at law or in equity, remove all or any portion of the deactivated or abandoned Grantee Facilities on behalf of the Grantee and restore the Public Rights-of-Way following such removal. Should the City choose to perform any such removal and restoration activities on the Grantee's behalf, the City may dispose of the removed Grantee Facilities in any manner it deems fit and in accordance with applicable laws, and the Grantee shall be liable to the City for all costs and expenses incurred by the City in performing such removal and restoration activities.

Section 15. Fees, Compensation for Use of Public Rights-of-Way and Taxes

15.1 The Grantee shall be subject to all permit fees allowed by law associated with activities undertaken within Public Rights-of-Way through the authority granted to the Grantee by this Franchise or under applicable provisions of the City Code.

15.2 Grantee shall pay itemized costs and expenses incurred by the City in the examination and report of the proposed franchise under the City Code.

15.3 In addition, the Grantee shall promptly reimburse the City for any and all documented costs the City reasonably and necessarily incurs in response to an emergency involving any Grantee Facilities. The Grantee shall also promptly reimburse the City, upon submittal by the City of an itemized billing, for the Grantee's proportionate share of all actual, identified costs and expenses incurred by the City in repairing any City facility (including City right-of-way), or altering such City facility if at the Grantee's request, as the result of the presence of any Grantee Facilities in the Public Right-of-Way. Such costs and expenses shall include, but not be limited to, the Grantee's proportionate share of the costs of City personnel assigned to review construction plans or to oversee or engage in any work in the Public Right-of-Way as a result of the emergency and the presence of the Grantee Facilities in the Public Right-of-Way. Any and all costs will be billed on an actual cost basis. The billing may be on an annual or project basis, but the City shall provide the Grantee with the City's itemization of costs at the conclusion of each project for informational purposes.

Section 16. Hold Harmless and Indemnification

16.1 Grantee agrees to indemnify, defend, and hold harmless any City Party (as such term is defined in Section 12 above) from any and all claims, demands, liability, suits, and judgments, including costs of defense thereof, for bodily injury to persons, death, or property damage arising out of the acts or omissions of any of the Grantee Parties (as such term is defined in Section 12 above) in the use of a Public Right-of-Way pursuant to this Franchise, except to the extent caused by the sole negligence or willful misconduct of any City Party. This covenant of indemnification shall include, but not be limited to, any and all claims, demands, liability, suits, and judgments arising out of the placement of Grantee's existing utility fixtures and any and all third party claims, demands, liability, suits, and judgments arising out of any of the Grantee Parties' failure to complete all utility related adjustments, relocations, repairs, or work in accordance with this Franchise and the work plan and schedule agreed to by the City and Grantee, except to the extent caused by the sole negligence or willful misconduct of any City Party. In the event of liability for damages arising out of bodily injury to persons, death or property damage caused by or resulting from the concurrent negligence of Grantee and the City, its officers, employees and agents, Grantee's liability hereunder shall be only to the extent of Grantee's negligence.

16.2 In the event the City incurs attorneys' fees, legal expenses, or other costs to enforce the provisions of this Section 16 against Grantee, all such fees, expenses, and costs shall be recoverable from Grantee to the extent the City prevails in such enforcement action.

16.3 It is specifically and expressly understood that, solely to the extent required to enforce the indemnification, defense and hold harmless obligations contained in this Section 16, Grantee waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees. This waiver has been mutually negotiated by the parties.

16.4 The City shall give Grantee timely written notice of the matter of any claim or of the commencement of any such action, suit or other proceeding covered by the indemnification, defense and hold harmless obligations contained in this Section 16. In the event any such claim

arises, the City or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the right and duty to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully therein.

16.5 The City's permitting approval, inspection, lack of inspection, or acceptance of any work performed by the Grantee Parties in connection with work authorized on Grantee Facilities, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise, shall not be grounds for avoidance of any of the indemnification, defense and hold harmless obligations contained in this Section 16.

16.6 The indemnification, defense and hold harmless obligations contained in this Section 16 shall survive the expiration, abandonment or termination of this Franchise.

Section 17. Limitation of City Liability

17.1 The City's administration of this Franchise shall not be construed to create the basis for any liability on the part of the City Parties, except for the City's sole negligence or willful misconduct. Neither party will be liable under this Franchise for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption, loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

Section 18. Insurance

18.1 Insurance Requirements

A. Insurance Required

- i. Grantee shall procure, and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Grantee or its employees. The Grantee shall pay the costs of such insurance. The Grantee shall require all contractors and subcontractors while working hereunder to obtain and maintain substantially the same coverage as required of Grantee, and furnish separate certificates of insurance from each contractor as evidence of compliance with the insurance requirements of this Franchise.
- ii. The Grantee is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Grantee to comply with the insurance requirements stated herein shall constitute a material breach of this Franchise.
- iii. Each required insurance policy shall be written on an "occurrence" basis.
- iv. Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided

by the terms and conditions of the policy(ies). Nothing contained in this provision shall affect and/or alter the application of any other provision contained within this Franchise.

B. Risk Assessment by Grantee

By requiring such insurance, the City shall not be deemed or construed to have assessed the risks that may be applicable to the Grantee under this Franchise, nor shall such minimum limits be construed to limit the limits available under any insurance coverage obtained by the Grantee. The Grantee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

C. Minimum Scope and Limits of Insurance. Coverage shall be at least as broad as and with limits not less than the following, which may be satisfied through a combination of primary and umbrella or excess liability coverage:

(i) General Liability

Insurance Services Office form number (CG 00 01) or its substantial equivalent covering COMMERCIAL GENERAL LIABILITY including XCU coverage: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$5,000,000 general aggregate limit.

(ii) Automobile Liability

Insurance Services Office form number (CA 00 01) covering BUSINESS AUTO COVERAGE, symbol 1 “any auto”; or the appropriate coverage provided by symbols 2, 7, 8 or 9, or its substantial equivalent for COMMERCIAL AUTOMOBILE LIABILITY covering all owned, non-owned and hired vehicles: \$1,000,000 combined single limit per accident for bodily injury and property damage if the use of motor vehicles is contemplated.

(iii) Workers’ Compensation

Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington. Qualified self-insurance is allowed.

(iv) Stop Gap/Employers Liability

Coverage shall be at least as broad as the indemnification, protection provided by the Workers’ Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the general liability policy: \$1,000,000.

D. Limits of Insurance - Construction Period

Prior to commencement of construction and until construction is complete and approved by the Grantee and the City, the Grantee shall cause the construction contractor and related professionals to procure and maintain insurance against claims

for injuries to persons or damages to property which may arise from, or in connection with the activities related to this Franchise. The cost of such insurance shall be paid by the Grantee and/or any of the Grantee's contractor/subcontractors. The Grantee shall cause the construction contractor and related professionals to maintain limits no less than the following, which limits may be satisfied through a combination of primary and umbrella or excess liability coverage:

- (i) Commercial General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$5,000,000 general aggregate.
- (ii) Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage.
- (iii) If doing design or engineering work, Professional Liability, Errors & Omissions: \$1,000,000, Per Claim and in the Aggregate.
- (iv) Workers Compensation: Statutory requirements of the state of residency.
- (v) Stop Gap or Employers Liability Coverage: \$1,000,000.

E. Other Insurance Provisions

The insurance policies required in this Franchise are to contain, or be endorsed to contain, the following provisions:

- (i) All Liability Policies except Professional and Workers' Compensation.
 - a. The City, its officers, officials, and employees, shall be named as additional insureds as their interest may appear under this Franchise and with respect to liability arising out of activities performed by or on behalf of the Grantee/contractor in connection with this Franchise. Such coverage shall include Products-Completed Operations.
 - b. To the extent of the Grantee's/contractor's negligence, the Grantee's/contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, and employees. Any insurance and/or self-insurance maintained by the City, its officers, officials, employees, or agents shall not contribute with the Grantee's insurance or benefit the Grantee in any way.
 - c. The Grantee's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- (ii) All Policies
Upon receipt of notice from its insurer, Grantee shall provide the City with thirty (30) days prior written notice of cancellation of any required coverage if not replaced.

F. Acceptability of Insurers

Unless otherwise approved by the City, insurance is to be placed with insurers with a Bests' rating of no less than A-VII.

Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII.

If, at any time, the foregoing policies shall fail to meet the above requirements, the Grantee shall, upon notice to that effect from the City, promptly obtain a new policy, and shall submit the same to the City, with appropriate certificates and blanket additional insured endorsements, for approval.

G. Verification of Coverage

The Grantee shall furnish the City with certificates of insurance and blanket additional insured endorsements required by this Franchise. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates for each insurance policy are to be on ACROD forms reasonably approved by the City prior to the commencement of activities associated with the Franchise.

H. Subcontractors

The Grantee shall require all subcontractors while working hereunder to obtain and maintain substantially the same coverage with substantially the same limits as required of Grantee and provide certificates of insurance and additional insured endorsements from each subcontractor; provided, however, this provision may be satisfied by contractors' insurance policies which meet such insurance requirements and insure the activities of their subcontractors in lieu of separate subcontractor insurance policies.

I. Insurance Review

In consideration of the duration of this Franchise, the parties agree that the Insurance section herein, at the discretion of the City Risk Manager, may be reviewed and adjusted with each amendment and within ninety (90) days of the end of the first five (5) year period of the term of this Franchise and the end of each successive five (5) year period thereafter. Any adjustments made as determined by the City Risk Manager, shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the first day of each successive five (5) year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of the Grantee. Any failure by the City to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

18.2 Grantee shall furnish the City with original certificates and blanket additional insured endorsements evidencing the insurance requirements of the Grantee before commencement of the work.

18.3 In satisfaction of the insurance requirements set forth in this Section 18, Grantee may self-insure against such risks in such amounts as are consistent with good utility practice. Grantee shall provide the City with reasonable written evidence that Grantee is maintaining such self-insurance.

Section 19. Performance Security [OPEN: Amount to be discussed and confirmed.]

19.1 Before undertaking any work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, the Grantee shall, upon the request of the City through its permit process, provide a security device in a sum to be set and approved by the City Engineer in accordance with City Code. Grantee may, upon approval of the City Engineer, provide a Franchise security device or Franchise bond to cover all work performed by Grantee under this Franchise in such amount as the City Engineer deems adequate.

Section 20. Annexation

20.1 If any Public Right-of-Way, or portion thereof, is incorporated into the limits of any city or town, it shall not be subject to the terms of this Franchise.

Section 21. Vacation

21.1 If any Public Right-of-Way, or portion thereof, is vacated, it shall not be subject to the terms of this Franchise. The City may retain a utility easement as allowed under RCW 36.87.140 when a Public Right-of-Way, or portion thereof, is vacated. The Grantee may request the City retain a utility easement; however in no case shall the City be obligated to retain such an easement. The City shall not be liable for any damages or loss to the Grantee by reason of such vacation and termination.

Section 22. Assignment

22.1 Neither this Franchise nor any interest therein shall be leased, sold, partitioned, transferred, assigned, disposed of, or otherwise subject to a change in the identity of the Grantee (each such activity, a "Transfer"), in whole or in part, in any manner, without the prior written consent of the City Council, which consent will not be unreasonably withheld, delayed or conditioned. Should any such Transfer be approved by the City, then each and every one of the provisions, conditions, regulations and requirements contained in this Franchise shall be binding upon the approved transferee beginning on the date of the Transfer, and all privileges, as well as all obligations and liabilities of the Grantee shall inure to such transferee equally as if such transferee was specifically mentioned wherever the Grantee is named herein. Notwithstanding the foregoing, Grantee may, without consent of the City, assign its interest in this Franchise to any person or entity controlling, controlled by, or under common control with Grantee as of the date of such assignment.

22.2 In the case of a Transfer to secure indebtedness, whether by mortgage or other security instrument, the City's consent shall not be required unless and until the secured party elects to realize upon the collateral. The Grantee shall provide prompt, written notice to the City, of any assignment to secure indebtedness.

22.3 Any attempt by Grantee to Transfer this Franchise in violation of this Section 22 shall constitute a material breach by Grantee.

22.4 The parties agree and acknowledge that, notwithstanding anything in this Franchise to the contrary, certain equipment deployed by Grantee in the Public Rights-of-Way pursuant to this Franchise may be owned and/or operated by Grantee's third-party wireless carrier customers ("Carriers") and installed and maintained by Grantee pursuant to license agreements between Grantee and such Carriers. Such equipment shall be treated as Grantee's Facilities for all purposes under this Franchise provided that (i) Grantee remains responsible and liable for all performance obligations under the Franchise with respect to such equipment; (ii) the City's sole point of contact regarding such equipment shall be Grantee; and (iii) Grantee shall have the right to remove and relocate the equipment.

22.5 Notwithstanding any provision in this Franchise to the contrary, Grantee shall have the right to assign this Franchise to any parent, subsidiary, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Grantee, or to any entity into which Grantee may be merged or consolidated or which purchases all or substantially all of the assets of Grantee that are subject to this Franchise.

Section 23. Termination, Revocation, and Forfeiture

23.1 If the Grantee, following written notice from the City of any breach of the Franchise and at least thirty (30) days thereafter to cure such breach: (i) defaults on any material term or condition of this Franchise and all applicable notice and cure periods have expired and such default is continuing; (ii) willfully violates or fails to comply with any of the provisions of this Franchise; or, (iii) through willful misconduct or gross negligence fails to heed or comply with any notice given the Grantee by the City under the provisions of this Franchise, then the Grantee shall, at the election of the City Council, forfeit all rights conferred hereunder and the Franchise may be terminated by the City Council. Grantee may terminate this Franchise for convenience, with thirty (30) days written notice to the City. Upon termination for any such cause, all rights of the Grantee granted hereunder or under any right-of-way use permit shall cease, and the Grantee shall within sixty (60) days of such termination remove or, with approval of the City Engineer, abandon in place all of the Grantee Facilities from the Public Rights-of-Way in accordance with Section 14 above.

Section 24. Remedies to Enforce Compliance; No Waiver

24.1 In lieu of termination, revocation or forfeiture as provided in Section 23, and without prejudicing any of its other legal rights and remedies, the non-defaulting party may elect to obtain an order from the Superior Court or other court, tribunal, or agency having competent jurisdiction compelling the non-defaulting party to comply with the provisions of this Franchise and to recover damages and costs incurred by the non-defaulting party by reason of the non-defaulting party's failure to comply. In addition to any other remedy provided herein, the non-defaulting party reserves the right to pursue any remedy to compel or force the non-defaulting party and/or its permitted successors and assigns to comply with the terms hereof, and the pursuit of any right or

remedy by the non-defaulting party shall not prevent the non-defaulting party from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

24.2 Failure of the non-defaulting party to exercise any rights or remedies under this Franchise shall not constitute a waiver of any such right or remedy and shall not prevent the non-defaulting party from pursuing such right or remedy at any future time.

24.3 Nothing in this Franchise is or was intended to confer third-party beneficiary status on any person or entity to enforce the terms of this Franchise.

Section 25. City Ordinances and Regulations - Reservation of Police Power

25.1 Nothing in this Franchise shall restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of the Franchise, including, but not limited to, any ordinances adopted under the City's police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations, including design standards, and utility accommodation policies, the location, elevation, manner of construction, and maintenance of any Grantee Facilities located within any Public Right-of-Way, and the Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law. In the event of a conflict between the regulatory provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.

Section 26. Eminent Domain, Powers of the People

26.1 This Franchise is subject to the power of eminent domain and the right of the City Council or the people acting for themselves through initiative or referendum to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 27. Survival and Force Majeure

27.1 Until such time as all of the Grantee Facilities have been removed from the Public Rights-of-Way in accordance with Section 14.1 above, or have been deactivated or abandoned in place in accordance with Sections 14.2 and 14.3 above, all of the provisions, conditions and requirements contained in the following sections of this Franchise shall survive the expiration, revocation, forfeiture or early termination of the Franchise: (i) Section 4 (Regulation of Use; Permits Required); (ii) Section 5 (Emergency Work); (iii) Section 6 (Compliance with Applicable Laws; Performance Standards); (iv) Section 7 (Restoration of Public Rights-of-Way); (v) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (vi) Section 10 (Undergrounding of Grantee Facilities); (vii) Section 12 (Hazardous Materials); (viii) Section 13 (Dangerous Conditions, Authority for City to Abate); (ix) Section 14 (Removal of Grantee Facilities; Abandonment of Grantee Facilities); (x) Section 15 (Fees, Compensation for Use of Public Rights-of-Way and Taxes); (xi) Section 16 (Hold Harmless and Indemnification); (xii)

Section 17 (Limitation of City Liability); (xiii) Section 18 (Insurance); (xiv) Section 19 (Performance Security); and, (xv) Section 24 (Remedies to Enforce Compliance; No Waiver).

27.2 After such time as all Grantee Facilities have been either removed from the Public Rights-of-Way or abandoned/deactivated in place to the City's satisfaction pursuant to Section 14 above, only the following provisions shall survive the expiration or earlier termination of the Franchise: (i) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (ii) Section 12 (Hazardous Materials); (iii) Section 16 (Hold Harmless and Indemnification); and (iv) Section 17 (Limitation of City Liability).

27.3 If the Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of a Force Majeure, then Grantee's performance shall be excused during a Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Grantee shall promptly perform its obligations in an orderly and expedited manner using industry accepted best practices. Grantee's performance shall not be excused by economic hardship nor by the misfeasance or malfeasance of its directors, officers, or employees.

27.4 For the purposes of this Franchise, "Force Majeure" means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen) that delays or prevents performance by the Grantee of any of its obligations under this Franchise, but only to the extent that and for so long as the event or circumstance is beyond the reasonable control of the Grantee and shall include, without limitation; all of the following events and circumstances: (i) acts of nature, including volcanic eruption, landslide, earthquake, flood, lightning, tornado or other unusually severe storm or environmental conditions, perils of the sea, wildfire or any other natural disaster; (ii) acts of public enemies, armed conflicts, act of foreign enemy, acts of terrorism (whether domestic or foreign, state-sponsored or otherwise), war (whether declared or undeclared), blockade, insurrection, riot, civil disturbance, revolution or sabotage; (iii) any form of compulsory government actions, acquisitions or condemnations, changes in applicable law, export or import restrictions, customs delays, rationing or allocations; (iv) accidents or other casualty, damage, loss or delay during transportation, explosions, fire, epidemics, quarantine or criminal acts; (v) inability, after the use of commercially reasonable efforts, to obtain from any governmental authority any permit, approval, order, decree, license, certificate, authorization or permission to the extent required by applicable law; (vi) inability, after the use of commercially reasonable efforts, to obtain any consent or approval required by the Franchise; and, (viii) third-party litigation contesting all or any portion of the Franchise or Grantee's rights under this Franchise.

Section 28. Governing Law and Stipulation of Venue

28.1 This Franchise and all use of Public Rights-of-Way granted herein shall be governed by the laws of the State of Washington, unless preempted by federal law. Any action relating to this Franchise shall be brought in the Superior Court of Washington for King County, Maleng Regional Justice Center, or in the case of a federal action, the United States District Court for the Western District of Washington at Seattle, unless an administrative agency has primary jurisdiction.

Section 29. Severability

29.1 If any section, sentence, clause, phrase or provision of this Franchise or the application of such provision to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, phrase or provision of this Franchise nor the application of the provision at issue to any other person or entity.

Section 30. Notice and Emergency Contact

30.1 Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

CITY OF SEATAC
Attn.: Public Works Department
4800 S. 188th Street
SeaTac, WA 98188-8605

MOBILITIE
Attn.: Legal Department
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660

WITH A COPY TO:

WITH A COPY TO:

City of SeaTac
Attn.: Legal Department
4800 S. 188th Street
SeaTac, WA 98188

MOBILITIE
Attn.: Asset Management
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660

The Grantee shall also provide the City a current emergency contact name (or title) and phone number available 24-hours a day, seven days a week. The Grantee shall promptly notify the City of any change in the notice address or emergency contact (or title) and phone number.

EMERGENCY CONTACT:
Network Operations Center (NOC)
Telephone No.: (877) 244-7889
Email: mnoc@mobilitie.com

Section 31. Acceptance

31.1 Within ninety (90) days after the passage and approval of this Franchise by the City Council, the Franchise may be accepted by the Grantee by its filing with the City Council an unconditional written acceptance thereof. Failure of the Grantee to so accept the Franchise within said period of time shall be deemed a rejection thereof by the Grantee, and the rights and privileges herein granted shall automatically cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

Section 32. Effective Date

32.1 This Franchise shall take effect, if at all, on the date on which the last of the following conditions has been met (the "Effective Date"): (i) ten (10) days have passed since the City

Manager executed this Franchise, or this ordinance was otherwise enacted; (ii) the Grantee executes a copy of this Franchise and returns it to the City Council within the time provided in Section 31 above; (iii) the Grantee presents to the City acceptable evidence of insurance as required in Section 18 above; and (iv) the Grantee pays all applicable fees as set forth in Section 15 above.

ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, Mobilitie, LLC covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the City of SeaTac, SeaTac Municipal Code, and this Franchise.

DATED this _____ day of June, 2018.

MOBILITIE, LLC

Printed Name: _____
Title: _____

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the Grantee returned a signed copy of this Franchise to the City Council within the time provided in Section 31; (2) the Grantee has presented to the City acceptable evidence of insurance as required in Section 18 of this Franchise; and, (3) the Grantee has paid all applicable processing costs and fees as set forth in Section 15 of this Franchise.

ORDINANCE NO. _____

AN ORDINANCE of the City Council of the City of SeaTac, Washington granting a non-exclusive franchise to Seattle SMSA Limited Partnership authorizing limited use of the public road rights-of-way in the City of SeaTac, Washington.

WHEREAS, Seattle SMSA Limited Partnership (d/b/a Verizon Wireless, or “Verizon”), has applied to the City for a non-exclusive franchise to construct, maintain, operate, replace and repair telecommunications facilities in, on, across, over, along, under, and/or through public rights-of-way within the City; and

WHEREAS, Section 35A.47.040 RCW and Chapter 5.25 of the SeaTac Municipal Code specify requirements for franchises in the City of SeaTac rights-of-way; and

WHEREAS, a franchise is a legislative authorization to use public rights-of-way, however, actual construction and activities in the rights-of-way will also be subject to approved permits after review of specific plans; and

WHEREAS, the SeaTac City Council held a public hearing on June 12, 2018, to solicit comments from the public and to consider whether to grant the requested franchises; and

WHEREAS, it has been found to be in the public interest that a franchise, authorizing use of public rights-of-way for wireless telecommunications facilities, be granted;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON, DO ORDAIN as follows:

Section 1. The City Council hereby grants a telecommunications franchise to Seattle SMSA Limited Partnership (d/b/a Verizon Wireless, or “Verizon”) authorizing limited use of the public road rights-of-way as set forth in the Franchise Agreements attached as Exhibit A.

Section 2. The City Manager is authorized to execute the Franchise Agreement in substantially similar form as attached hereto as Exhibit A.

Section 3. This Ordinance shall be in full force and effect five (5) days after passage and publication as required by law.

ADOPTED this _____ day of _____, 2018, and signed in authentication thereof on this _____ day of _____, 2018.

CITY OF SEATAC

Michael Siefkes, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:

Mary E. Mirante Bartolo, City Attorney

[Effective Date: _____]

[Small Cell Franchises]

EXHIBIT A

After Recording Return to:

City of SeaTac
Attn.: City Clerk's Office
4800 S. 188th Street
SeaTac, WA 98188-8605

Grantor:	City of SeaTac
Grantee:	Seattle SMSA Limited Partnership d/b/a Verizon Wireless
Tax Account No:	Not Assigned
Legal Description:	City of SeaTac
Ref. # of Docs. Affected:	N/A
Document Title:	An Ordinance of SeaTac City Council Granting a Non-exclusive Franchise Authorizing Limited Use of Public Road Rights-of-Way in the City of SeaTac, Washington to Seattle SMSA Limited Partnership d/b/a Verizon Wireless

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Section 1. Grant of Franchise

1.1 Pursuant to Sections 35A.11.020 and 35A.47.040 of the Revised Code of Washington (“RCW”) the City of SeaTac, a political subdivision of the State of Washington (the “City”), hereby grants to Seattle SMSA Limited Partnership d/b/a Verizon Wireless, (the “Grantee”), a non-exclusive franchise to use those portions of the City’s rights-of-way described in Section 1.3 below, for the purposes described in Section 1.2 below, subject to compliance with all applicable provisions of the SeaTac Municipal Code (“SMC” or “City Code”), City policies and the terms and conditions contained in this franchise ordinance (the “Franchise”).

1.2 This Franchise grants the Grantee the right, privilege and authority to use portions of the Public Rights-of-Way (as such term is defined below) of the City for the sole purposes of constructing, digging, maintaining, operating, replacing, upgrading, removing, restoring and repairing its wireless telecommunications facilities and uses incidental thereto (the “Permitted Use”) and for no other purpose or use whatsoever. Grantee hereby warrants that it expects to provide the following services within the City: small cell network consisting of a collection of interrelated Small Cell Facilities designed to deliver personal wireless services. The term “Public Rights-of-Way” or “Rights-of-Way” as used in this Franchise shall mean all public streets, roads, ways, or alleys of the City as now or hereafter laid out, platted, dedicated or improved. Pursuant to this Franchise, the Grantee is authorized to install, locate, construct, operate, maintain, use, replace, restore, upgrade and/or remove such equipment and facilities as may be reasonably necessary or convenient for the conduct of the Permitted Use (the “Grantee Facilities”), in, on, across, over, along, under or through certain Public Rights-of-Way of the City, subject to all applicable provisions of the SeaTac Municipal Code (including any City Engineering Standards), the City’s Comprehensive Plan, Sections 35A.11.020 and 35A.47.070 RCW, and the terms and conditions of City right-of-way use permits issued pursuant to the SMC and Section 4 of this Franchise. This Franchise merely authorizes the Grantee to occupy and use the Public Rights-of-Way at issue, and does not transfer, convey or vest any easement, title, servitude, or other real property interest in or to any Public Right-of-Way or portion thereof in or to the Grantee.

1.3 This Franchise covers all Public Rights-of-Way located within the City of SeaTac as now or hereafter laid out, platted, dedicated or improved.

Section 2. Non-exclusive Franchise

2.1 This Franchise is granted upon the express condition and understanding that it shall be a non-exclusive franchise which shall not in any manner prevent or hinder the City from granting to other parties, at other times and under such terms and conditions as the City, in its sole discretion, may deem appropriate, other franchises or similar use rights in, on, to, across, over, upon, along, under or through any Public Rights-of-Way. Owners, whether public or private, of any authorized facilities or equipment installed in, on, across, over, along, under, and/or through a Public Right-of-Way prior to the construction and/or installation of Grantee’s Facilities in the same location, shall have preference as to positioning and location of their facilities. The position and location of all Grantee’s Facilities in the Public Rights-of-Way shall be subject to the authority of the City Engineer.

2.2 This Franchise shall in no way prevent, inhibit or prohibit the City from using any of the Public Rights-of-Way covered or affected by this Franchise, nor shall this Franchise affect the City's jurisdiction, authority or power over any of them, in whole or in part. The City expressly retains its power to make or perform any and all changes, relocations, repairs, maintenance, establishments, improvements, dedications, or vacations of, or to any of the Public Rights-of-Way as the City may, in its sole and absolute discretion, deem fit, including the dedication, establishment, maintenance and/or improvement of new Public Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 3. Term; Early Termination

3.1 The initial term of the Franchise shall be for a period of approximately five (5) years (the "Term"), beginning on the Effective Date (as such term is defined in Section 32 of this Franchise) of the Franchise, and continuing until June 30, 2023 (the "Term Expiration Date"), unless earlier terminated, revoked or modified pursuant to the provisions of this Franchise.

3.2 If any federal, state, or local laws or regulations and any binding judicial interpretations thereof (collectively, "Laws") that govern any aspect of the rights or obligations of the parties under this Franchise shall change after the Effective Date and such change makes any aspect of such rights or obligations inconsistent with the then-effective Laws, then the parties agree to promptly reopen the terms of this Franchise in order to make amendments as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.

3.3 Grantee may terminate the Franchise for any reason or no reason in Grantee's sole discretion upon thirty (30) days written notice to the City, in which case Grantee shall remove Grantee Facilities within ninety (90) days of termination of the Franchise or, with the approval of the City Engineer, abandon in place such equipment, as provided in Section 14.

Section 4. Regulation of Use; Permits Required

4.1 The installation, location, maintenance, operation, relocation, removal or any other work related to any of the Grantee Facilities occurring in, on, across, over, along, under, and/or through any Public Right-of-Way covered by this Franchise, shall be performed in a safe and workmanlike manner, in such a way as to minimize interference with the free flow of traffic and the use of adjacent property, whether such property is public or private.

4.2 The Grantee shall not commence any work within Public Rights-of-Way until a right-of-way use permit authorizing such work has been issued by the City pursuant to the SMC. In addition to any standards of performance imposed by this Franchise, any and all work performed by Grantee pursuant to this Franchise shall be performed in accordance with all City Codes and standards applicable to such work, including the City-approved plans and specifications for the work, and the terms and conditions of any right-of-way use permit and/or other permits and/or approvals required under the SMC in order to accomplish the work (e.g., lane closure or road detour permits). Grantee understands and acknowledges that some or all of Grantee's activities may require additional project permits and approvals under City land use codes and development regulations, and Grantee accepts full responsibility for obtaining and complying with same.

4.3 In addition to any criteria set forth in Chapter 5.25 of the SMC, the City Engineering Standards, and the City's utility accommodation policies, in reviewing the Grantee's application for any right-of-way use permit pursuant to this Franchise, the City Engineer may, but is not required to, apply the following criteria in reviewing proposed utility routes and in the issuance, conditioning, or denial of such permit:

- (i) the capacity of the Public Rights-of-Way at issue to accommodate the proposed Grantee Facilities;
- (ii) the capacity of the Public Rights-of-Way at issue to accommodate additional utility, cable, telecommunications, or other public facilities if the right-of-way use permit is granted;
- (iii) the damage or disruption, if any, to public or private facilities, improvements, service, travel, or landscaping if the right-of-way use permit is granted;
- (iv) the public interest in minimizing the cost and disruption of construction within the Public Rights-of-Way at issue, including, but not limited to, coordination with future utility installation or City projects;
- (v) recent and/or proposed construction and/or improvements to the Public Rights-of-Way at issue;
- (vi) the availability of alternate routes, locations, and/or methods of construction or installation for the proposed Grantee Facilities, including, but not limited to, whether other routes are preferred; and
- (vii) whether the Grantee has received all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies with jurisdiction over the activities proposed by the Grantee.

4.4 Prior to commencing any work in a critical area as defined by City Code, the Grantee shall comply with all applicable requirements of the City's critical areas regulations, and shall obtain any and all required permits and approvals. The granting of this Franchise shall in no way relieve the Grantee from its responsibility for avoiding "take" of any threatened or endangered species as defined by the Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., as amended, in the performance of any work authorized by this Franchise and/or any right-of-way use permits.

Section 5. Emergency Work

5.1 Should any of the Grantee Facilities in the Public Rights-of-Way break or become damaged such that an immediate danger to the property, life, health or safety of any individual is presented, or should any site upon which the Grantee is engaged in construction or maintenance activities pursuant to this Franchise for any reason be in such a condition that an immediate danger to the property, life, health or safety of any individual is presented, the Grantee shall immediately take such measures as are reasonably necessary to repair the Grantee Facilities at issue or to remedy the dangerous conditions on the site at issue so as to protect the property, life, health or safety of individuals. In the event of an emergency described above, the Grantee may take corrective action immediately, without first applying for or obtaining any permits or other authorizations that might otherwise have been required by the City Code and/or this Franchise. However, the emergency provisions contained in this Section 5 shall not relieve the Grantee from its obligation to obtain

any permits necessary for the corrective actions taken, and the Grantee shall apply for all such permits by the next business day after the emergency. In the event of any emergency described in this Section 5, the Grantee shall also notify the City of the emergency as soon as may be reasonably feasible after the Grantee discovers the emergency (such notice may be telephonic or email communication), but no later than the next business day.

Section 6. Compliance with Applicable Laws; Performance Standards

6.1 The Grantee shall at all times during the Term of the Franchise undertake the Permitted Use in compliance with all federal, state and local laws, rules and regulations (including, but not limited to, the City's comprehensive plan, zoning code, and other development regulations) that are applicable to any and all work or other activities performed by Grantee pursuant to or under authority of the Franchise.

6.2 During any period of installation, maintenance, operation, relocation, removal or any other work related to any of the Grantee Facilities subject to this Franchise, Grantee shall use industry accepted best-practices to ensure that, to the extent reasonably feasible, such work does not impede: (i) public use of the Public Rights-of-Way at issue for vehicular and pedestrian transportation; (ii) construction and/or maintenance within Public Rights-of-Way and other authorized facilities, equipment and improvements; (iii) the operation, maintenance or improvement by the City of the Public Rights-of-Way or other public property impacted by Grantee's work; or (iv) use of the Public Rights-of-Way for other governmental purposes.

6.3 During any periods of construction within the Public Rights-of-Way, the Grantee shall at all times post and maintain proper barricades and comply with all applicable safety regulations as required by the City Code, the City Engineering Standards, or the laws of the State of Washington, including, but not limited to, RCW 39.04.180 for the construction of trench safety systems.

6.4 Before the Grantee commences any work under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys, Grantee shall reference all such monuments and markers using a method or methods approved by the City Engineer, and a complete set of reference notes for monument and other ties shall be filed with the City prior to the commencement of construction. Reference points shall be so located that they will not be disturbed during Grantee's operations. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, as directed by the City Engineer, and to federal, state and local standards. All costs incurred pursuant to this Section 6.4 shall be borne by Grantee.

6.5 If the Grantee shall at any time plan to make excavations in any area covered by the Franchise, the Grantee shall, upon receipt of a written request to do so, provide an opportunity for the City and/or any other grantees or authorized users of the Public Right-of-Way at issue to participate in such excavation, and shall coordinate the location and installation of its Grantee Facilities with the City or such other grantees or authorized entities, PROVIDED THAT, Grantee need not permit the City or any other parties to participate in an excavation if the City Engineer reasonably determines that any of the following are true:

- (i) such joint use would unreasonably delay the performance of Grantee's work;
- (ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions for accomplishing such joint use; or
- (iii) valid safety reasons exist for denying a request for such joint use.

6.6 If the Grantee shall at any time plan to include communication facilities in furtherance of the Permitted Use, the Grantee shall provide an opportunity for the City to enter into negotiations for shared use of such communication facilities, and shall coordinate negotiation of shared use of its communication facilities with the City if such shared use is reasonably feasible; PROVIDED THAT, Grantee need not permit the City to participate in shared use of communication facilities if any of the following are true, in the reasonable judgment of the City and the Grantee:

- (i) such shared use would unreasonably delay the performance of Grantee's work;
- (ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions, including but not limited to allocation of costs amongst various parties, for accomplishing such shared use;
- (iii) valid safety reasons exist for denying a request for such shared use and/or the proposed facilities of the third party are in conflict with the best practices employed by the Grantee; or
- (iv) the installation of communication facilities is for the purpose of an emergency action to protect the property, life, health or safety of individuals.

Section 7. Restoration of Public Rights-of-Way

7.1 Promptly after completing any work in, on, under, over, across or upon any Public Rights-of-Way, including, but not limited to any excavation, installation, construction, relocation, maintenance, repair or removal of any Grantee Facilities, Grantee shall, at Grantee's sole cost and expense, restore the Public Rights-of-Way and any adjacent affected areas to a like condition or better, or as otherwise required by the City Engineering Standards. Grantee shall also comply with any and all restoration conditions contained in applicable permits or approvals, and the City Engineer shall have final authority to determine in each instance of restoration whether adequate restoration has been performed, reasonable wear and tear excepted.

Section 8. Record Plans, Record Drawings, and Records of Grantee Facility Locations

8.1 The Grantee shall maintain adequate records to document obligations performed under this Franchise. The Grantee agrees and covenants that it shall, within 120 days after completion of any construction project involving a Public Right-of-Way, provide to the City, at no cost to the City, a copy of all as-built plans, maps and records revealing the approximate final locations and conditions of the Grantee Facilities located within such Public Right-of-Way. Additionally, the City may, at any time, deliver a written request to the Grantee for copies of maps and records showing the approximate location of all or any portion of the Grantee Facilities. In such event, the Grantee shall, within thirty (30) days after receipt of the request, provide the City, at no cost to the City, with copies of the requested record plans, record drawings and other records within a reasonable time after receiving the City's request for same. The City shall have the right to review the Grantee's records regarding the subject matter of this Franchise at reasonable times, upon

reasonable notice. The right to review records shall last for two (2) years from the expiration or earlier termination of this Franchise. In addition to the maps and records of the Grantee Facility locations, the Grantee shall provide the City, upon the City's request, with copies of records of construction, maintenance, operation, inspections, or regulatory compliance for all Grantee Facilities subject to this Franchise as may be deemed necessary by the City, in its sole discretion, to manage the city roads, Public Rights-of-Way, or other property, or to protect the public health, safety, and welfare. Nothing in this Section 8 shall be construed to require Grantee to violate state or federal law concerning customer privacy, nor shall this Section 8 be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

8.2 If the Grantee considers any portion of its records provided to the City, whether in electronic or hard copy form, to be protected from disclosure under law, the Grantee shall clearly identify any specific information that it claims to be confidential or proprietary. If the City receives a request under the Public Records Act, Chapter 42.56 RCW, to inspect or copy the information so identified by the Grantee and the City determines that release of the information is required by the Act or otherwise appropriate, the City's sole obligations shall be to notify the Grantee: (a) of the request; and, (b) of the date that such information will be released to the requester unless the Grantee obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Grantee fails to timely obtain a court order enjoining disclosure, the City will release the requested information on the date specified. The City has, and by this section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the Act. The City shall not be liable to the Grantee for releasing records not clearly identified by the Grantee as confidential or proprietary. The City shall not be liable to the Grantee for any records that the City releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

Section 9. Relocation of Grantee Facilities

9.1 The Grantee agrees and covenants that it will promptly, and with as much written notice as is feasible under the circumstances (but in event less than one hundred twenty (120) days), at its sole cost and expense, protect, support, temporarily disconnect, relocate, or remove from the Public Rights-of-Way any Grantee Facilities when the City Engineer determines after full and fair consideration that such a relocation is necessary for any of the following reasons: (i) traffic conditions; (ii) public safety; (iii) dedications of new Public Rights-of-Way and the establishment and/or improvement thereof; (iv) widening and/or improvement of existing Public Rights-of-Way; (v) vacations of Public Rights-of-Way; (vi) freeway construction; (vii) change or establishment of road grade; or, (viii) the construction of any public improvement or structure by any governmental agency acting in a governmental capacity, PROVIDED that the Grantee shall generally have the privilege to temporarily bypass, in the authorized portion of the same Public Right-of-Way, upon approval by the City Engineer, any Grantee Facilities required to be temporarily disconnected or removed; AND FURTHER PROVIDED that if the City pays for or reimburses the relocation costs of another wireless telecommunications provider, under substantially similar circumstances, it shall pay for or reimburse a proportionate share of Grantee's relocation costs. In the event of a conflict between this Section 9 and the specific terms of any existing real property interests and rights owned by the Grantee, such as a utility easement or other servitude, the terms of this Section 9 shall be subject to the specific terms of the real property interests and rights owned by

the Grantee unless and until those rights are extinguished or amended: (i) by mutual agreement; (ii) pursuant to a judicial condemnation order; (iii) by negotiated sale of said property rights between Grantee and the City in-lieu of condemnation; or, (iv) by any other lawful means.

9.2 Upon the request of the City and in order to facilitate City improvements to Public Rights-of-Way, the Grantee agrees to locate and, if reasonably determined necessary by the City, to excavate and expose, at its sole cost and expense, portions of the Grantee Facilities for inspection so that the location of the facilities may be taken into account in the improvement design.

9.3 Grantee shall, upon reasonable prior written request of any non-governmental person or entity holding a permit issued by the City to move any structure, temporarily move its facilities to allow the moving of such structure, PROVIDED: (i) Grantee may impose a reasonable charge on the permittee for the movement of Grantee's Facilities and such person or entity agrees in writing to pay such charge; (ii) Grantee is granted a permit by the City for such work if a permit is needed; and, (iii) Grantee is given not less than thirty (30) business days notice to arrange for such temporary relocation, EXCEPT in any case where the City Engineer determines Grantee Facilities are not reasonably movable.

9.4 Where the City imposes conditions or requirements on a third party development requiring the relocation of any Grantee Facilities, the City shall not be responsible for paying any costs related to such relocation. Nothing in this Franchise is intended or shall be construed to prohibit the Grantee from assessing on such person or entity, other than the City, the costs of relocation as a condition of such relocation.

9.5 To assist Grantee with anticipating relocations of Grantee Facilities related to City improvements to the Public Rights-of-Way, upon request, the City will provide the Grantee with copies of the most recently adopted Six-Year Transportation Improvement Program and Annual Construction Program.

9.6 If the City determines that a City project necessitates the relocation of existing Grantee Facilities, the parties shall proceed as follows:

- (i) The City shall provide the Grantee at least one hundred twenty (120) days written notice prior to the commencement of the construction phase of the City project at issue, PROVIDED, that under the following circumstances the City need only provide the Grantee with written notice as soon as may be reasonably practicable: (a) in the event of an emergency posing a threat to public safety, health or welfare; (b) in the event of an emergency beyond the control of the City and which will result in adverse financial consequences to the City; or, (c) where the need to relocate the Grantee Facilities could not reasonably have been anticipated by the City.
- (ii) The City shall provide the Grantee with copies of pertinent portions of the designs and specifications for the City project as well as a proposed new location for the Grantee Facilities at least ninety (90) days prior to the commencement of the construction phase of the City project to enable Grantee to promptly relocate such Grantee Facilities. Upon request of the Grantee, thirty percent (30%), sixty percent (60%), and ninety-percent (90%) design plans shall be provided to the Grantee. The City and the Grantee

shall, upon the request of either party, meet to discuss the plans, specifications and schedule of the City project at issue at a mutually agreed time in a location determined by the City.

- (iii) After receipt of such notice and such plans and specifications, the Grantee shall complete relocation of its facilities within the Public Right-of-Way at least ten (10) days prior to commencement of the construction phase of the City project at no charge, cost or expense to the City, unless otherwise agreed to within a separate agreement executed by both Parties. Relocation shall be accomplished in such a manner as to accommodate the City's project. In the event of an emergency, the Grantee shall relocate the Grantee Facilities at issue within a time period reasonably specified by the City Engineer.
- (iv) The City and the Grantee may, for each individual City project, enter into an agreement for costs incurred by the City for relocation of Grantee's Facilities and associated work tied to the relocation.
- (v) In the event of an emergency, the Grantee shall relocate the Grantee Facilities at issue within a time period reasonably specified by the City Engineer.

9.7 The Grantee may, after receipt of written notice requesting a relocation of any Grantee Facilities in accordance with Section 9.6, submit to the City proposed written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives are suitable to accommodate the City project. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration but the final decision is the sole discretion of the City. Where, upon the request of the Grantee, the City incurs additional costs in performing any maintenance, operation, or improvement of or to public facilities due to measures taken by the City to avoid damaging or to otherwise accommodate one or more Grantee Facilities, the Grantee shall reimburse the City for the full amount of such additional costs promptly upon receiving the City's invoice for same. In the event the City ultimately determines that there is no reasonable or feasible alternative to relocation, the Grantee shall relocate the Grantee Facilities at issue as otherwise provided in this Section 9.

9.8 The provisions of this Section 9 shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of any Grantee Facility by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay any City projects. The Grantee shall provide certified record drawings (or as-built drawings) detailing the location of Grantee's Facilities within the Public Right-of-Way required to be relocated or removed for the purpose of the non-City project.

9.9 Should relocation be required for a City project pursuant to this Section 9, the Grantee shall be responsible for timely relocation of the Grantee Facilities at issue and the coordination of such relocation with the City (or the City's contractor for the City project). The Grantee shall be fully responsible for the costs of any delays to City projects resulting from relocations of any Grantee Facilities. The Grantee shall indemnify, defend and hold harmless the City from and against any and all claims, lawsuits, or damages, including those brought by a contractor of the City engaged

in a City project, arising out of or caused in whole or in part by the location or relocation of one or more Grantee Facilities, as more fully set forth in Section 16 of this Franchise, except to the extent such claims or damages may be due to or caused by the sole negligence or willful misconduct of the City or its employees, contractors or agents.

Section 10. Undergrounding of Grantee Facilities

10.1 The undergrounding requirements of this Section 10 shall apply where the Grantee Facilities consist of cable or any other facilities, equipment or systems which are reasonably capable of being placed underground. Where the Grantee Facilities consist of antennae or other facilities, equipment or systems which are required to remain above ground in order to be functional, the terms and conditions of this Section 10 shall not apply.

10.2 In any area of the City in which there are no aerial facilities other than antennae or other facilities required to remain above ground in order to be functional, or in any area in which telephone, electric power wires or other cables have been placed underground, the Grantee shall not be permitted to erect poles or to run or suspend wires, cables or other similar facilities thereon, but shall lay all such wires, cables or other facilities underground in the manner required by the City. The Grantee acknowledges and agrees that, even if the City does not require the undergrounding of all or any portion of the Grantee Facilities at the time the Grantee applies for the applicable right-of-way use permit, the City may, at any time in the future, and in the City's reasonable discretion, require the Grantee to convert all or any portion of the aerial Grantee Facilities to underground installation at the Grantee's sole cost and expense.

10.3 Whenever the City requires the undergrounding of the aerial facilities in any area of the City, the Grantee shall underground the aerial Grantee Facilities in that area of the City in the manner specified by the City, concurrently with the other affected facilities. Where other facilities are present or proposed and involved in the undergrounding project, the Grantee shall only be required to pay its fair share of common costs borne by all facilities, in addition to the costs specifically attributable to the undergrounding of the Grantee Facilities. "Common costs" shall include necessary costs not specifically attributable to the installation or undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of the Grantee Facilities being installed or undergrounded in comparison to the total number and size of all other utility facilities being installed or undergrounded.

Section 11. Maintenance of Grantee Facilities

11.1 The Grantee shall maintain all Grantee Facilities in good condition and repair, in accordance with industry accepted best practices. This also includes any graffiti removal from Grantee's Facilities.

11.2 The Grantee shall take necessary steps to maintain a reasonably clear area around all Grantee Facilities installed above-ground within Public Rights-of-Way. A minimum of five (5) feet of clearance will be maintained around each such object so as to provide clear visibility from the roadway for City operations and maintenance. Prior to using any chemical sprays within the

Public Rights-of-Way to control or kill weeds and brush, the Grantee must obtain the City's permission. The City may limit or restrict the types, amounts, and timing of applications provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.

Section 12. Hazardous Materials

12.1 The City understands and agrees that the Permitted Use contemplated by the Grantee involves the use by Grantee of certain chemicals and/or materials within the Public Rights-of-Way that are classified as hazardous or otherwise harmful to life, health and/or safety (any such chemical or material, a "Hazardous Material") under one or more applicable federal, state or local laws, rules, regulations or ordinances (collectively, the "Hazardous Materials Laws"). The Grantee shall be permitted to use such Hazardous Materials within the Public Rights-of-Way as are reasonably necessary for the Grantee's conduct of the Permitted Use and which are customary for the industry in which the Grantee is engaged, PROVIDED, however, that the Grantee's use of any such Hazardous Materials within the Public Rights-of-Way shall at all times be undertaken in full compliance with all Hazardous Materials Laws, including any orders or instructions issued by any authorized regulatory agencies.

12.2 The Grantee covenants and agrees that it will neither cause nor permit, in any manner, the release, seepage or spill of any Hazardous Material upon, into, under, over, across or through any Public Right-of-Way or property adjacent thereto, whether public or private, in violation of any applicable Hazardous Materials Law. Any such release, seepage or spill of any Hazardous Material within the Public Rights-of-Way that is in violation of any applicable Hazardous Materials Law and is caused by Grantee or its directors, officers, agents, employees or contractors, is, referred to as "Release."

12.3 Should a Release occur, the Grantee shall immediately upon receiving notice thereof provide written notice of the Release to the City and the Washington State Department of Ecology. The Grantee agrees it shall indemnify, defend and hold the City, its elected and appointed officials, employees, agents and volunteers (collectively, the "City Parties") harmless from and against any and all claims, lawsuits, actions, judgments, awards, penalties, fines and other damages (including, but not limited to, reasonable attorneys' fees and costs) incurred or suffered by any of the City Parties, to the extent the Release is caused by any act or omission of Grantee or its directors, officers, agents, employees or, contractors (collectively, the "Grantee Parties") within Public Rights-of-Way or property adjacent thereto, whether public or private. Grantee shall be responsible, at its sole cost and expense, for completely cleaning up and remediating, as required by any governmental agency having jurisdiction, any Release caused by any Grantee Party within Public Rights-of-Way or property adjacent thereto, whether public or private. Notwithstanding the Grantee's obligation to completely remediate same, in the event of any Release by a Grantee Party, the City may (but need not), in the interest of protecting the health, safety, welfare and property of the public, immediately take whatever actions it deems necessary or advisable, in its sole discretion, to contain, clean up or remediate the Release at issue. Should the City choose to take any actions pursuant to the preceding sentence, the City shall be entitled to repayment from the Grantee of any and all reasonable costs and expenses incurred by the City in performing such actions.

12.4 Should the Grantee cause a Release as described in Section 12.3 above, failure to promptly comply with all orders or instructions lawfully issued by any authorized regulatory agencies regarding clean-up and remediation shall constitute a material breach of this Franchise, and the City Council may terminate or suspend the Franchise in accordance with Section 23.

Section 13. Dangerous Conditions, Authority for City to Abate

13.1 Whenever the Grantee's excavation, construction, installation, relocation, maintenance, repair, abandonment, or removal of Grantee Facilities authorized by this Franchise has caused or contributed to a condition that, in the reasonable opinion of the City Engineer, substantially impairs the lateral support of the adjoining road or public or private property, or endangers the public, an adjoining public place, road facilities, City property or private property, the City Engineer may direct the Grantee to remedy the condition or danger to the satisfaction of the City Engineer, within a specified period of time and at the Grantee's sole cost and expense.

13.2 In the event that the Grantee fails or refuses to promptly take the actions directed by the City Engineer, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, in accordance with Section 13.1 above, the City may enter upon the property and take such actions as are reasonably necessary to protect the public, the adjacent roads, or road facilities, or to maintain the lateral support thereof, or actions necessary to ensure the public safety, and the Grantee shall be liable to the City for actual costs and expenses incurred by the City in performing such actions.

Section 14. Removal of Grantee Facilities; Abandonment of Grantee Facilities

14.1 In no event may all or any portion of the Grantee's Facilities located in, on, under, over, across or through the Public Right-of-Way be abandoned or temporarily abandoned in place by the Grantee. In the event of any unauthorized abandonment of all or any portion of the deactivated or abandoned Grantee Facilities by the Grantee, the City may, at its election, and in addition to any other remedies or enforcement options available to the City under this Franchise, at law or in equity, remove all or any portion of the deactivated or abandoned Grantee Facilities on behalf of the Grantee and restore the Public Rights-of-Way following such removal. Should the City choose to perform any such removal and restoration activities on the Grantee's behalf, the City may dispose of the removed Grantee Facilities in any manner it deems fit and in accordance with applicable laws, and the Grantee shall be liable to the City for all costs and expenses incurred by the City in performing such removal and restoration activities.

Section 15. Fees, Compensation for Use of Public Rights-of-Way and Taxes

15.1 The Grantee shall be subject to all permit fees allowed by law associated with activities undertaken within Public Rights-of-Way through the authority granted to the Grantee by this Franchise or under applicable provisions of the City Code.

15.2 Grantee shall pay itemized costs and expenses incurred by the City in the examination and report of the proposed franchise under the City Code.

15.3 In addition, the Grantee shall promptly reimburse the City for any and all documented costs the City reasonably and necessarily incurs in response to an emergency involving any Grantee Facilities. The Grantee shall also promptly reimburse the City, upon submittal by the City of an itemized billing, for the Grantee's proportionate share of all actual, identified costs and expenses incurred by the City in repairing any City facility (including City right-of-way), or altering such City facility if at the Grantee's request, as the result of the presence of any Grantee Facilities in the Public Right-of-Way. Such costs and expenses shall include, but not be limited to, the Grantee's proportionate share of the costs of City personnel assigned to review construction plans or to oversee or engage in any work in the Public Right-of-Way as a result of the emergency and the presence of the Grantee Facilities in the Public Right-of-Way. Any and all costs will be billed on an actual cost basis. The billing may be on an annual or project basis, but the City shall provide the Grantee with the City's itemization of costs at the conclusion of each project for informational purposes.

Section 16. Hold Harmless and Indemnification

16.1 Grantee agrees to indemnify, defend, and hold harmless any City Party (as such term is defined in Section 12 above) from any and all claims, demands, liability, suits, and judgments, including costs of defense thereof, for bodily injury to persons, death, or property damage arising out of the acts or omissions of any of the Grantee Parties (as such term is defined in Section 12 above) in the use of a Public Right-of-Way pursuant to this Franchise, except to the extent caused by the sole negligence or willful misconduct of any City Party. This covenant of indemnification shall include, but not be limited to, any and all claims, demands, liability, suits, and judgments arising out of the placement of Grantee's existing utility fixtures and any and all third party claims, demands, liability, suits, and judgments arising out of any of the Grantee Parties' failure to complete all utility related adjustments, relocations, repairs, or work in accordance with this Franchise and the work plan and schedule agreed to by the City and Grantee, except to the extent caused by the sole negligence or willful misconduct of any City Party. In the event of liability for damages arising out of bodily injury to persons, death or property damage caused by or resulting from the concurrent negligence of Grantee and the City, its officers, employees and agents, Grantee's liability hereunder shall be only to the extent of Grantee's negligence.

16.2 In the event the City incurs attorneys' fees, legal expenses, or other costs to enforce the provisions of this Section 16 against Grantee, all such fees, expenses, and costs shall be recoverable from Grantee to the extent the City prevails in such enforcement action.

16.3 It is specifically and expressly understood that, solely to the extent required to enforce the indemnification, defense and hold harmless obligations contained in this Section 16, Grantee waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees. This waiver has been mutually negotiated by the parties.

16.4 The City shall give Grantee timely written notice of the matter of any claim or of the commencement of any such action, suit or other proceeding covered by the indemnification, defense and hold harmless obligations contained in this Section 16. In the event any such claim

arises, the City or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the right and duty to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully therein.

16.5 The City's permitting approval, inspection, lack of inspection, or acceptance of any work performed by the Grantee Parties in connection with work authorized on Grantee Facilities, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise, shall not be grounds for avoidance of any of the indemnification, defense and hold harmless obligations contained in this Section 16.

16.6 The indemnification, defense and hold harmless obligations contained in this Section 16 shall survive the expiration, abandonment or termination of this Franchise.

Section 17. Limitation of City Liability

17.1 The City's administration of this Franchise shall not be construed to create the basis for any liability on the part of the City Parties, except for the City's sole negligence or willful misconduct. Neither party will be liable under this Franchise for consequential, indirect, or punitive damages (including lost revenues, loss of equipment, interruption, loss of service, or loss of data) for any cause of action, whether in contract, tort, or otherwise, even if the party was or should have been aware of the possibility of these damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

Section 18. Insurance

18.1 Insurance Requirements

A. Insurance Required

- (i) Grantee shall procure, and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Grantee or its employees. The Grantee shall pay the costs of such insurance. The Grantee shall require all contractors and subcontractors while working hereunder to obtain and maintain substantially the same coverage as required of Grantee, and furnish separate certificates of insurance from each contractor as evidence of compliance with the insurance requirements of this Franchise.
- (ii) The Grantee is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Grantee to comply with the insurance requirements stated herein shall constitute a material breach of this Franchise.
- (iii) Each required insurance policy shall be written on an "occurrence" basis.
- (iv) Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent

provided by the terms and conditions of the policy(ies). Nothing contained in this provision shall affect and/or alter the application of any other provision contained within this Franchise.

B. Risk Assessment by Grantee

By requiring such insurance, the City shall not be deemed or construed to have assessed the risks that may be applicable to the Grantee under this Franchise, nor shall such limits be construed to limit the limits available under any insurance coverage obtained by the Grantee. The Grantee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

C. Scope and Limits of Insurance; Coverage shall be at least as broad as and with limits the following:

- (i) General Liability
Insurance Services Office form or its substantial equivalent covering COMMERCIAL GENERAL LIABILITY including XCU coverage: \$5,000,000 combined single limit per occurrence for bodily injury and property damage; and \$5,000,000 general aggregate limit including personal and advertising injury.
- (ii) Commercial Automobile Liability
Insurance Services Office form number covering all owned, non-owned and hired vehicles with a limit of \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (iii) Workers' Compensation
Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington. Qualified self-insurance is allowed.
- (iv) Stop Gap/Employers Liability
Coverage shall be at least as broad as the indemnification, protection provided by the Workers' Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy: \$1,000,000 each accident/disease/policy limit.

D. Limits of Insurance - Construction Period

Prior to commencement of construction and until construction is complete and approved by the Grantee and the City, the Grantee shall cause the construction contractor and related professionals to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to this Franchise. The cost of such insurance shall be paid by the Grantee and/or any of the Grantee's contractor/subcontractors.

The Grantee shall cause the construction contractor and related professionals to maintain limits no less than the following, which limits may be satisfied through a combination of primary and umbrella or excess liability coverage:

- (i) Commercial General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$5,000,000 general aggregate.
- (ii) Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage.
- (iii) If doing design or engineering work, Professional Liability, Errors & Omissions: \$1,000,000, Per Claim and in the Aggregate.
- (iv) Workers Compensation: Statutory requirements of the state of residency.
- (v) Stop Gap or Employers Liability Coverage: \$1,000,000.

E. Other Insurance Provisions

The insurance policies required in this Franchise are to contain the following provisions:

- (i) All Liability Policies except Professional and Workers' Compensation.
 - a. The City, its officers, officials, and employees, shall be included as additional insureds as their interest may appear under this Franchise and with respect to liability arising out of activities performed by the Grantee in connection with this Franchise. Such coverage shall include Products-Completed Operations.
 - b. To the extent of the Grantee's negligence, the Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, and employees. Any insurance and/or self-insurance maintained by the City, its officers, officials or employees, shall not contribute with the Grantee's insurance or benefit the Grantee in any way.
 - c. The Grantee's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- (ii) All Policies
Upon receipt of notice from its insurer, Grantee shall provide the City with thirty (30) days prior written notice of cancellation of any required coverage if not replaced.

F. Acceptability of Insurers

Unless otherwise approved by the City, insurance is to be placed with insurers with a Bests' rating of no less than A-VII.

Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII.

If, at any time, the foregoing policies shall fail to meet the above requirements, the Grantee shall, upon notice to that effect from the City, promptly obtain a new policy, and shall submit the same to the City, with appropriate certificates and blanket additional insured endorsements, for approval.

G. The Grantee shall furnish the City with certificates of insurance and blanket additional insured endorsements required by this Franchise. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates for each insurance policy are to be on ACORD forms reasonably approved by the City prior to the commencement of activities associated with the Franchise.

H. Subcontractors

The Grantee shall require all subcontractors while working hereunder to obtain and maintain substantially the same coverage with substantially the same limits as required of Grantee and provide certificates of insurance and additional insured endorsements from each subcontractor.

I. Insurance Review

In consideration of the duration of this Franchise, the parties agree that the Insurance section herein, at the discretion of the City Risk Manager, may be reviewed and adjusted with each amendment and within ninety (90) days of the end of the first five (5) year period of the term of this Franchise and the end of each successive five (5) year period thereafter. Any adjustments made as determined by the City Risk Manager, shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the first day of each successive five (5) year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of the Grantee. Any failure by the City to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

18.2 Grantee shall furnish the City with original certificates and blanket additional insured endorsements evidencing the insurance requirements of the Grantee before commencement of the work.

18.3 In satisfaction of the insurance requirements set forth in this Section 18, Grantee may self-insure against such risks in such amounts as are consistent with good utility practice. Grantee shall provide the City with reasonable written evidence that Grantee is maintaining such self-insurance.

Section 19. Performance Security [OPEN: Amount to be discussed and confirmed.]

19.1 Before undertaking any work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, the Grantee shall, upon the request of the City through its permit process, provide a security device in a sum to be set and approved by the City Engineer in accordance with City Code. Grantee may, upon approval of the City Engineer, provide a Franchise security device or Franchise bond to cover all work performed by Grantee under this Franchise in such amount as the City Engineer deems adequate.

Section 20. Annexation

20.1 If any Public Right-of-Way, or portion thereof, is incorporated into the limits of any city or town, it shall not be subject to the terms of this Franchise.

Section 21. Vacation

21.1 If any Public Right-of-Way, or portion thereof, is vacated, it shall not be subject to the terms of this Franchise. The City may retain a utility easement as allowed under RCW 36.87.140 when a Public Right-of-Way, or portion thereof, is vacated. The Grantee may request the City retain a utility easement; however in no case shall the City be obligated to retain such an easement. The City shall not be liable for any damages or loss to the Grantee by reason of such vacation and termination.

Section 22. Assignment

22.1 Neither this Franchise nor any interest therein shall be leased, sold, partitioned, transferred, assigned, disposed of, or otherwise subject to a change in the identity of the Grantee (each such activity, a "Transfer"), in whole or in part, in any manner, without the prior written consent of the City Council, which consent will not be unreasonably withheld, delayed or conditioned. Should any such Transfer be approved by the City, then each and every one of the provisions, conditions, regulations and requirements contained in this Franchise shall be binding upon the approved transferee beginning on the date of the Transfer, and all privileges, as well as all obligations and liabilities of the Grantee shall inure to such transferee equally as if such transferee was specifically mentioned wherever the Grantee is named herein. Notwithstanding the foregoing, Grantee may, without consent of the City, assign its interest in this Franchise to any person or entity controlling, controlled by, or under common control with Grantee as of the date of such assignment.

22.2 In the case of a Transfer to secure indebtedness, whether by mortgage or other security instrument, the City's consent shall not be required unless and until the secured party elects to realize upon the collateral. The Grantee shall provide prompt, written notice to the City, of any assignment to secure indebtedness.

22.3 Any attempt by Grantee to Transfer this Franchise in violation of this Section 22 shall constitute a material breach by Grantee.

22.4 The parties agree and acknowledge that, notwithstanding anything in this Franchise to the contrary, certain equipment deployed by Grantee in the Public Rights-of-Way pursuant to this Franchise may be owned and/or operated by Grantee's third-party wireless carrier customers

(“Carriers”) and installed and maintained by Grantee pursuant to license agreements between Grantee and such Carriers. Such equipment shall be treated as Grantee’s Facilities for all purposes under this Franchise provided that (i) Grantee remains responsible and liable for all performance obligations under the Franchise with respect to such equipment; (ii) the City’s sole point of contact regarding such equipment shall be Grantee; and (iii) Grantee shall have the right to remove and relocate the equipment.

22.5 Notwithstanding any provision in this Franchise to the contrary, Grantee shall have the right to assign this Franchise to any parent, subsidiary, or any person, firm, or corporation that shall control, be under the control of, or be under common control with Grantee, or to any entity into which Grantee may be merged or consolidated or which purchases all or substantially all of the assets of Grantee that are subject to this Franchise.

Section 23. Termination, Revocation, and Forfeiture

23.1 If the Grantee, following written notice from the City of any breach of the Franchise and at least thirty (30) days thereafter to cure such breach: (i) defaults on any material term or condition of this Franchise and all applicable notice and cure periods have expired and such default is continuing; (ii) willfully violates or fails to comply with any of the provisions of this Franchise; or, (iii) through willful misconduct or gross negligence fails to heed or comply with any notice given the Grantee by the City under the provisions of this Franchise, then the Grantee shall, at the election of the City Council, forfeit all rights conferred hereunder and the Franchise may be terminated by the City Council. Grantee may terminate this Franchise for convenience, with thirty (30) days written notice to the City. Upon termination for any such cause, all rights of the Grantee granted hereunder or under any right-of-way use permit shall cease, and the Grantee shall within sixty (60) days of such termination remove or, with approval of the City Engineer, abandon in place all of the Grantee Facilities from the Public Rights-of-Way in accordance with Section 14 above.

Section 24. Remedies to Enforce Compliance; No Waiver

24.1 In lieu of termination, revocation or forfeiture as provided in Section 23, and without prejudicing any of its other legal rights and remedies, the non-defaulting party may elect to obtain an order from the Superior Court or other court, tribunal, or agency having competent jurisdiction compelling the non-defaulting party to comply with the provisions of this Franchise and to recover damages and costs incurred by the non-defaulting party by reason of the non-defaulting party’s failure to comply. In addition to any other remedy provided herein, the non-defaulting party reserves the right to pursue any remedy to compel or force the non-defaulting party and/or its permitted successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the non-defaulting party shall not prevent the non-defaulting party from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

24.2 Failure of the non-defaulting party to exercise any rights or remedies under this Franchise shall not constitute a waiver of any such right or remedy and shall not prevent the non-defaulting party from pursuing such right or remedy at any future time.

24.3 Nothing in this Franchise is or was intended to confer third-party beneficiary status on any person or entity to enforce the terms of this Franchise.

Section 25. City Ordinances and Regulations - Reservation of Police Power

25.1 Nothing in this Franchise shall restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of the Franchise, including, but not limited to, any ordinances adopted under the City's police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations, including design standards, and utility accommodation policies, the location, elevation, manner of construction, and maintenance of any Grantee Facilities located within any Public Right-of-Way, and the Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law. In the event of a conflict between the regulatory provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.

Section 26. Eminent Domain, Powers of the People

26.1 This Franchise is subject to the power of eminent domain and the right of the City Council or the people acting for themselves through initiative or referendum to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 27. Survival and Force Majeure

27.1 Until such time as all of the Grantee Facilities have been removed from the Public Rights-of-Way in accordance with Section 14.1 above, or have been deactivated or abandoned in place in accordance with Sections 14.2 and 14.3 above, all of the provisions, conditions and requirements contained in the following sections of this Franchise shall survive the expiration, revocation, forfeiture or early termination of the Franchise: (i) Section 4 (Regulation of Use; Permits Required); (ii) Section 5 (Emergency Work); (iii) Section 6 (Compliance with Applicable Laws; Performance Standards); (iv) Section 7 (Restoration of Public Rights-of-Way); (v) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (vi) Section 10 (Undergrounding of Grantee Facilities); (vii) Section 12 (Hazardous Materials); (viii) Section 13 (Dangerous Conditions, Authority for City to Abate); (ix) Section 14 (Removal of Grantee Facilities; Abandonment of Grantee Facilities); (x) Section 15 (Fees, Compensation for Use of Public Rights-of-Way and Taxes); (xi) Section 16 (Hold Harmless and Indemnification); (xii) Section 17 (Limitation of City Liability); (xiii) Section 18 (Insurance); (xiv) Section 19 (Performance Security); and, (xv) Section 24 (Remedies to Enforce Compliance; No Waiver).

27.2 After such time as all Grantee Facilities have been either removed from the Public Rights-of-Way or abandoned/deactivated in place to the City's satisfaction pursuant to Section 14 above, only the following provisions shall survive the expiration or earlier termination of the Franchise: (i) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (ii)

Section 12 (Hazardous Materials); (iii) Section 16 (Hold Harmless and Indemnification); and (iv) Section 17 (Limitation of City Liability).

27.3 If the Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of a Force Majeure, then Grantee's performance shall be excused during a Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Grantee shall promptly perform its obligations in an orderly and expedited manner using industry accepted best practices. Grantee's performance shall not be excused by economic hardship nor by the misfeasance or malfeasance of its directors, officers, or employees.

27.4 For the purposes of this Franchise, "Force Majeure" means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen) that delays or prevents performance by the Grantee of any of its obligations under this Franchise, but only to the extent that and for so long as the event or circumstance is beyond the reasonable control of the Grantee and shall include, without limitation; all of the following events and circumstances: (i) acts of nature, including volcanic eruption, landslide, earthquake, flood, lightning, tornado or other unusually severe storm or environmental conditions, perils of the sea, wildfire or any other natural disaster; (ii) acts of public enemies, armed conflicts, act of foreign enemy, acts of terrorism (whether domestic or foreign, state-sponsored or otherwise), war (whether declared or undeclared), blockade, insurrection, riot, civil disturbance, revolution or sabotage; (iii) any form of compulsory government actions, acquisitions or condemnations, changes in applicable law, export or import restrictions, customs delays, rationing or allocations; (iv) accidents or other casualty, damage, loss or delay during transportation, explosions, fire, epidemics, quarantine or criminal acts; (v) inability, after the use of commercially reasonable efforts, to obtain from any governmental authority any permit, approval, order, decree, license, certificate, authorization or permission to the extent required by applicable law; (vi) inability, after the use of commercially reasonable efforts, to obtain any consent or approval required by the Franchise; and, (viii) third-party litigation contesting all or any portion of the Franchise or Grantee's rights under this Franchise.

Section 28. Governing Law and Stipulation of Venue

28.1 This Franchise and all use of Public Rights-of-Way granted herein shall be governed by the laws of the State of Washington, unless preempted by federal law. Any action relating to this Franchise shall be brought in the Superior Court of Washington for King County, Maleng Regional Justice Center, or in the case of a federal action, the United States District Court for the Western District of Washington at Seattle, unless an administrative agency has primary jurisdiction.

Section 29. Severability

29.1 If any section, sentence, clause, phrase or provision of this Franchise or the application of such provision to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, phrase or provision of this Franchise nor the application of the provision at issue to any other person or entity.

Section 30. Notice and Emergency Contact

30.1 Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

CITY OF SEATAC

Attn.: Public Works Department
4800 S. 188th Street
SeaTac, WA 98188-8605

Seattle SMSA Limited Partnership d/b/a Verizon
Wireless

Attn.: Network Real Estate
180 Washington Valley Road
Bedminster, NJ 07921

WITH A COPY TO:

City of SeaTac

Attn.: Legal Department
4800 S. 188th Street
SeaTac, WA 98188

WITH A COPY TO:

Seattle SMSA Limited Partnership d/b/a Verizon
Wireless

Attn.: Pacific Market General Counsel
15505 Sand Canyon Avenue
Irvine, CA 92618

The Grantee shall also provide the City a current emergency contact name (or title) and phone number available 24-hours a day, seven days a week. The Grantee shall promptly notify the City of any change in the notice address or emergency contact (or title) and phone number.

EMERGENCY CONTACT:

Telephone No.:

Email:

Section 31. Acceptance

31.1 Within ninety (90) days after the passage and approval of this Franchise by the City Council, the Franchise may be accepted by the Grantee by its filing with the City Council an unconditional written acceptance thereof. Failure of the Grantee to so accept the Franchise within said period of time shall be deemed a rejection thereof by the Grantee, and the rights and privileges herein granted shall automatically cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

Section 32. Effective Date

32.1 This Franchise shall take effect, if at all, on the date on which the last of the following conditions has been met (the "Effective Date"): (i) ten (10) days have passed since the City Manager executed this Franchise, or this ordinance was otherwise enacted; (ii) the Grantee executes a copy of this Franchise and returns it to the City Council within the time provided in Section 31 above; (iii) the Grantee presents to the City acceptable evidence of insurance as required in Section 18 above; and (iv) the Grantee pays all applicable fees as set forth in Section 15 above.

ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, Seattle SMSA Limited Partnership d/b/a Verizon Wireless covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the City of SeaTac, SeaTac Municipal Code, and this Franchise.

DATED this _____ day of June, 2018.

**SEATTLE SMSA LIMITED
PARTNERSHIP D/B/A VERIZON
WIRELESS**

Printed Name: _____
Title: _____

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the Grantee returned a signed copy of this Franchise to the City Council within the time provided in Section 31; (2) the Grantee has presented to the City acceptable evidence of insurance as required in Section 18 of this Franchise; and, (3) the Grantee has paid all applicable processing costs and fees as set forth in Section 15 of this Franchise.

EXHIBIT A

After Recording Return To:
City of SeaTac City of SeaTac
Attn.: City Clerk's Office
4800 S. 188th Street
SeaTac, WA 98188-8605

Grantor:	City of SeaTac
Grantee:	Mobilitie, LLC
Tax Account No:	Not Assigned
Legal Description:	City of SeaTac
Ref. # of Docs. Affected:	N/A
Document Title:	A Non-exclusive Franchise Authorizing Limited Use of Public Road Rights-of-Way in the City of SeaTac, Washington to Mobilitie, LLC

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Section 1. Grant of Franchise

1.1 Pursuant to Sections 35A.11.020 and 35A.47.040 of the Revised Code of Washington ("RCW") the City of SeaTac, a political subdivision of the State of Washington (the "City"), hereby grants to Mobilitie, LLC, a Nevada limited liability company, (the "Grantee"), a non-exclusive franchise to use those portions of the City's rights-of-way described in Section 1.3 below, for the purposes described in Section 1.2 below, subject to compliance with all applicable provisions of the SeaTac Municipal Code ("SMC" or "City Code"), City policies and the terms and conditions contained in this franchise ordinance (the "Franchise").

1.2 This Franchise grants the Grantee the right, privilege and authority to use portions of the Public Rights-of-Way (as such term is defined below) of the City for the sole purposes of constructing, maintaining, operating, replacing and repairing its wireless telecommunications facilities and uses incidental thereto (the "Permitted Use") and for no other purpose or use whatsoever. The term "Public Rights-of-Way" as used in this Franchise shall mean all public streets, roads, ways, or alleys of the City as now or hereafter laid out, platted, dedicated or improved. Pursuant to this Franchise, the Grantee shall have the right to install, locate, construct, operate, maintain, use, replace and/or remove such equipment and facilities as may be reasonably necessary or convenient for the conduct of the Permitted Use (the "Grantee Facilities"), in, on, across, over, along, under or through certain Public Rights-of-Way of the City, subject to all applicable provisions of the SMC (including City Engineering Standards), Sections 35A.11.020 and 35A.47.070 RCW, and the terms and conditions of City right-of-way use permits issued pursuant to the SMC and Section 4 of this Franchise. This Franchise merely authorizes the Grantee to occupy and use the Public Rights-of-Way at issue, and does not transfer, convey or vest any easement, title, servitude, or other real property interest in or to any Public Right-of-Way or portion thereof in or to the Grantee.

1.3 This Franchise covers all Public Rights-of-Way located within the City of SeaTac as now or hereafter laid out, platted, dedicated or improved.

Section 2. Non-exclusive Franchise

2.1 This Franchise is granted upon the express condition and understanding that it shall be a non-exclusive franchise which shall not in any manner prevent or hinder the City from granting to other parties, at other times and under such terms and conditions as the City, in its sole discretion, may deem appropriate, other franchises or similar use rights in, on, to, across, over, upon, along, under or through any Public Rights-of-Way. Owners, whether public or private, of any authorized facilities or equipment installed in, on, across, over, along, under, and/or through a Public Right-of-Way prior to the construction and/or installation of Grantee's Facilities in the same location, shall have preference as to positioning and location of their facilities. The position and location of all Grantee's Facilities in the Public Rights-of-Way shall be subject to the authority of the City Engineer.

2.2 This Franchise shall in no way prevent, inhibit or prohibit the City from using any of the Public Rights-of-Way covered or affected by this Franchise, nor shall this Franchise affect the City's jurisdiction, authority or power over any of them, in whole or in part. The City expressly retains its power to make or perform any and all changes, relocations, repairs, maintenance, establishments, improvements, dedications, or vacations of, or to any of the Public Rights-of-Way as the City may, in its sole and absolute discretion, deem fit, including the dedication, establishment, maintenance and/or improvement of new Public Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 3. Term; Early Termination

3.1 The initial term of the Franchise shall be for a period of approximately ten (10) years (the "Initial Term"), beginning on the Effective Date (as such term is defined in Section 32 of this Franchise) of the Franchise, and continuing until June 30, 2028 (the "Initial Term Expiration Date"), unless earlier terminated, revoked or modified pursuant to the provisions of this Franchise.

3.2 This Franchise shall automatically renew for an additional term of ten (10) years (the "Extended Term," and, together with the Initial Term, the "Term"), subject to the City's right to unilaterally open negotiations with the Grantee at any time after the Initial Term Expiration Date, as more fully described in Section 3.3 below unless earlier terminated, revoked or modified pursuant to the provisions of this Franchise.

3.3 The City shall have the right, in its sole and absolute discretion, at any time after the Initial Term Expiration Date, to unilaterally elect to open negotiations with the Grantee regarding proposed amendments, alterations or other changes (collectively, the "Amendments") to the terms and conditions of the Franchise. In such event, the City shall deliver written notice to the Grantee stating the City's general desire to amend the terms and conditions of the Franchise. Within thirty (30) days after the date on which the Grantee receives the City's notice letter, the Grantee and the City shall enter into good faith negotiations regarding potential Amendments to the terms and conditions of the Franchise. Should the parties reach agreement regarding any such Amendments, the parties shall memorialize such Amendments and seek approval of same from the City Council. Grantee's failure to participate in good faith negotiations regarding potential Amendments shall constitute material breach of the Franchise.

3.4 Grantee may terminate the Franchise for any reason or no reason in Grantee's sole discretion upon thirty (30) days written notice to the City, in which case Grantee shall remove its communications equipment.

Section 4. Regulation of Use; Permits Required

4.1 The installation, location, maintenance, operation, relocation, removal or any other work related to any of the Grantee Facilities occurring in, on, across, over, along, under, and/or

through any Public Right-of-Way covered by this Franchise, shall be performed in a safe and workmanlike manner, in such a way as to minimize interference with the free flow of traffic and the use of adjacent property, whether such property is public or private.

4.2 The Grantee shall not commence any work within Public Rights-of-Way until a right-of-way use permit authorizing such work has been issued by the City pursuant to the SMC. In addition to any standards of performance imposed by this Franchise, any and all work performed by Grantee pursuant to this Franchise shall be performed in accordance with all current City standards applicable to such work, including the City-approved plans and specifications for the work, and the terms and conditions of any right-of-way use permit and/or other permits and/or approvals required under Chapter 5.25 of the SMC in order to accomplish the work (e.g., lane closure or road detour permits). Grantee understands and acknowledges that some or all of Grantee's activities may require additional project permits and approvals under County land use codes and development regulations, and Grantee accepts full responsibility for obtaining and complying with same.

4.3 In addition to any criteria set forth in Chapter 5.25 of the SMC, the City Engineering Standards, and the City's utility accommodation policies, in reviewing the Grantee's application for any right-of-way use permit pursuant to this Franchise, the City Engineer may apply the following criteria in reviewing proposed utility routes and in the issuance, conditioning, or denial of such permit:

- (i) the capacity of the Public Rights-of-Way at issue to accommodate the proposed Grantee Facilities;
- (ii) the capacity of the Public Rights-of-Way at issue to accommodate additional utility, cable, telecommunications, or other public facilities if the right-of-way use permit is granted;
- (iii) the damage or disruption, if any, to public or private facilities, improvements, service, travel, or landscaping if the right-of-way use permit is granted;
- (iv) the public interest in minimizing the cost and disruption of construction within the Public Rights-of-Way at issue, including, but not limited to, coordination with future utility installation or City projects;
- (v) recent and/or proposed construction and/or improvements to the Public Rights-of-Way at issue;
- (vi) the availability of alternate routes, locations, and/or methods of construction or installation for the proposed Grantee Facilities, including, but not limited to, whether other routes are preferred; and
- (vii) whether the Grantee has received all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies with jurisdiction over the activities proposed by the Grantee.

4.4 Prior to commencing any work in a critical area as defined by City Code, the Grantee shall comply with all applicable requirements of the City's critical areas regulations, and shall obtain any and all required permits and approvals. The granting of this Franchise shall in no

way relieve the Grantee from its responsibility for avoiding "take" of any threatened or endangered species as defined by the Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., as amended, in the performance of any work authorized by this Franchise and/or any right-of-way use permits.

Section 5. Emergency Work

Should any of the Grantee Facilities in the Public Rights-of-Way break or become damaged such that an immediate danger to the property, life, health or safety of any individual is presented, or should any site upon which the Grantee is engaged in construction or maintenance activities pursuant to this Franchise for any reason be in such a condition that an immediate danger to the property, life, health or safety of any individual is presented, the Grantee shall immediately take such measures as are reasonably necessary to repair the Grantee Facilities at issue or to remedy the dangerous conditions on the site at issue so as to protect the property, life, health or safety of individuals. In the event of an emergency described above, the Grantee may take corrective action immediately, without first applying for or obtaining any permits or other authorizations that might otherwise have been required by the City Code and/or this Franchise. However, the emergency provisions contained in this Section 5 shall not relieve the Grantee from its obligation to obtain any permits necessary for the corrective actions taken, and the Grantee shall apply for all such permits as soon as is reasonably possible after the occurrence of the emergency. In the event of any emergency described in this Section 5, the Grantee shall notify the City of the emergency as soon as may be reasonably feasible after the Grantee discovers the emergency (such notice may be telephonic).

Section 6. Compliance with Applicable Laws; Performance Standards

6.1 The Grantee shall at all times during the Term of the Franchise undertake the Permitted Use in compliance with all federal, state and local laws, rules and regulations (including, but not limited to, the County's comprehensive plan, zoning code, and other development regulations) that are applicable to any and all work or other activities performed by Grantee pursuant to or under authority of the Franchise.

6.2 During any period of installation, maintenance, operation, relocation, removal or any other work related to any of the Grantee Facilities subject to this Franchise, Grantee shall use industry accepted best-practices to ensure that, to the extent reasonably feasible, such work does not impede: (i) public use of the Public Rights-of-Way at issue for vehicular and pedestrian transportation; (ii) construction and/or maintenance within Public Rights-of-Way and other authorized facilities, equipment and improvements; (iii) the operation, maintenance or improvement by the City of the Public Rights-of-Way or other public property impacted by Grantee's work; or (iv) use of the Public Rights-of-Way for other governmental purposes.

6.3 During any periods of construction within the Public Rights-of-Way, the Grantee shall at all times post and maintain proper barricades and comply with all applicable safety regulations

as required by the SCC, the City Engineering Standards, or the laws of the State of Washington, including, but not limited to, RCW 39.04.180 for the construction of trench safety systems.

6.4 Before the Grantee commences any work under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys, Grantee shall reference all such monuments and markers using a method or methods approved by the City Engineer, and a complete set of reference notes for monument and other ties shall be filed with the City prior to the commencement of construction. Reference points shall be so located that they will not be disturbed during Grantee's operations. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, as directed by the City Engineer, and to federal, state and local standards. All costs incurred pursuant to this Section 6.4 shall be borne by Grantee.

6.5 If the Grantee shall at any time plan to make excavations in any area covered by the Franchise, the Grantee shall, upon receipt of a written request to do so, provide an opportunity for the City and/or any other grantees or authorized users of the Public Right-of-Way at issue to participate in such excavation, and shall coordinate the location and installation of its Grantee Facilities with the City or such other grantees or authorized entities, PROVIDED THAT, Grantee need not permit the City or any other party (ies) to participate in an excavation if the City Engineer determines that any of the following are true:

- (i) such joint use would unreasonably delay the performance of Grantee's work;
- (ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions for accomplishing such joint use; or
- (iii) valid safety reasons exist for denying a request for such joint use.

6.6 If the Grantee shall at any time plan to include communication facilities in furtherance of the Permitted Use, the Grantee shall provide an opportunity for the City to enter into negotiations for shared use of such communication facilities, and shall coordinate negotiation of shared use of its communication facilities with the City if such shared use is reasonably feasible; PROVIDED THAT, Grantee need not permit the City to participate in shared use of communication facilities if any of the following are true, in the reasonable judgment of the City and the Grantee:

- (i) such shared use would unreasonably delay the performance of Grantee's work;
- (ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions, including but not limited to allocation of costs amongst various parties, for accomplishing such shared use;
- (iii) valid safety reasons exist for denying a request for such shared use and/or the proposed facilities of the third party are in conflict with the best practices employed by the Grantee; or
- (iv) the installation of communication facilities is for the purpose of an emergency action to protect the property, life, health or safety of individuals.

Section 7. Restoration of Public Rights-of-Way

Promptly after completing any work in, on, under, over, across or upon any Public Rights-of-Way, including, but not limited to any excavation, installation, construction, relocation, maintenance, repair or removal of any Grantee Facilities, Grantee shall, at Grantee's sole cost and expense, restore the Public Rights-of-Way and any adjacent affected areas as required by the City Engineering Standards. Grantee shall also comply with any and all restoration conditions contained in applicable permits or approvals. The City Engineer shall have final authority to determine in each instance of restoration whether adequate restoration has been performed, reasonable wear and tear excepted.

Section 8. Record Plans, Record Drawings, and Records of Grantee Facility Locations

8.1 The Grantee shall maintain adequate records to document obligations performed under this Franchise. The Grantee agrees and covenants that it shall, promptly upon substantial completion of any construction project involving a Public Right-of-Way, provide to the City, at no cost to the City, a copy of all as-built plans, maps and records revealing the approximate final locations and conditions of the Grantee Facilities located within such Public Right-of-Way. Additionally, the City may, at any time, deliver a written request to the Grantee for copies of maps and records showing the approximate location of all or any portion of the Grantee Facilities. In such event, the Grantee shall provide the City, at no cost to the City, with copies of the requested record plans, record drawings and other records within a reasonable time after receiving the City's request for same. The City shall have the right to review the Grantee's records regarding the subject matter of this Franchise at reasonable times, upon reasonable notice. The right to review records shall last for six (6) years from the expiration or earlier termination of this Franchise. In addition to the maps and records of the Grantee Facility locations, the Grantee shall provide the City, upon the City's request, with copies of records of construction, maintenance, operation, inspections, or regulatory compliance for all Grantee Facilities subject to this Franchise as may be deemed necessary by the City, in its sole discretion, to manage the county roads, Public Rights-of-Way, or other property, or to protect the public health, safety, and welfare. Nothing in this Section 8 shall be construed to require Grantee to violate state or federal law concerning customer privacy, nor shall this Section 8 be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

8.2 If the Grantee considers any portion of its records provided to the City, whether in electronic or hard copy form, to be protected from disclosure under law, the Grantee shall clearly identify any specific information that it claims to be confidential or proprietary. If the City receives a request under the Public Records Act, Chapter 42.56 RCW, to inspect or copy the information so identified by the Grantee and the County determines that release of the information is required by the Act or otherwise appropriate, the City's sole obligations shall be to notify the Grantee: (a) of the request; and, (b) of the date that such information will be released to the requester unless the Grantee obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Grantee fails to timely obtain a court order enjoining

disclosure, the City will release the requested information on the date specified. The City has, and by this section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the Act. The City shall not be liable to the Grantee for releasing records not clearly identified by the Grantee as confidential or proprietary. The City shall not be liable to the Grantee for any records that the City releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

Section 9. Relocation of Grantee Facilities

9.1 The Grantee agrees and covenants that it will promptly, at its sole cost and expense, protect, support, temporarily disconnect, relocate, or remove from the Public Rights-of-Way any Grantee Facilities when the City Engineer determines after full and fair consideration that such a relocation is necessary for any of the following reasons: (i) traffic conditions; (ii) public safety; (iii) dedications of new Public Rights-of-Way and the establishment and/or improvement thereof; (iv) widening and/or improvement of existing Public Rights-of-Way; (v) vacations of Public Rights-of-Way; (vi) freeway construction; (vii) change or establishment of road grade; or, (viii) the construction of any public improvement or structure by any governmental agency acting in a governmental capacity, PROVIDED that the Grantee shall generally have the privilege to temporarily bypass, in the authorized portion of the same Public Right-of-Way, upon approval by the City Engineer, any Grantee Facilities required to be temporarily disconnected or removed. In the event of a conflict between this Section 9 and the specific terms of any existing real property interests and rights owned by the Grantee, such as a utility easement or other servitude, the terms of this Section 9 shall be subject to the specific terms of the real property interests and rights owned by the Grantee unless and until those rights are extinguished or amended: (i) by mutual agreement; (ii) pursuant to a judicial condemnation order; (iii) by negotiated sale of said property rights between Grantee and the County in-lieu of condemnation; or, (iv) by any other lawful means.

9.2 Upon the request of the City and in order to facilitate City improvements to Public Rights-of-Way, the Grantee agrees to locate and, if reasonably determined necessary by the City, to excavate and expose, at its sole cost and expense, portions of the Grantee Facilities for inspection so that the location of the facilities may be taken into account in the improvement design.

9.3 Grantee shall, upon reasonable prior written request of any person or entity holding a permit issued by the City to move any structure, temporarily move its facilities to allow the moving of such structure, PROVIDED: (i) Grantee may impose a reasonable charge on the permittee for the movement of Grantee's Facilities; (ii) Grantee is granted a permit by the City for such work if a permit is needed; and, (iii) Grantee is given not less than ten (10) business days notice to arrange for such temporary relocation, EXCEPT in any case where the City Engineer determines Grantee Facilities are not reasonably movable.

9.4 Where the City imposes conditions or requirements on a third party development requiring the relocation of any Grantee Facilities, the City shall not be responsible for paying

any costs related to such relocation. Nothing in this Franchise is intended or shall be construed to prohibit the Grantee from assessing on such person or entity, other than the City, the costs of relocation as a condition of such relocation.

9.5 To assist Grantee with anticipating relocations of Grantee Facilities related to City improvements to the Public Rights-of-Way, upon request, the City will provide the Grantee with copies of the most recently adopted Six-Year Transportation Improvement Program ("TIP") and Annual Construction Program ("ACP").

9.6 If the City determines that a City project necessitates the relocation of existing Grantee Facilities, the parties shall proceed as follows:

- (i) The City shall provide the Grantee at least ninety (90) days written notice prior to the commencement of the construction phase of the City project at issue, PROVIDED, that under the following circumstances the City need only provide the Grantee with written notice as soon as may be reasonably practicable: (a) in the event of an emergency posing a threat to public safety, health or welfare; (b) in the event of an emergency beyond the control of the City and which will result in adverse financial consequences to the City; or, (c) where the need to relocate the Grantee Facilities could not reasonably have been anticipated by the City.
- (ii) The City shall provide the Grantee with copies of pertinent portions of the designs and specifications for the City project as well as a proposed new location for the Grantee Facilities at least ninety (90) days prior to the commencement of the construction phase of the City project to enable Grantee to promptly relocate such Grantee Facilities. Upon request of the Grantee, thirty-percent (30%), sixty-percent (60%), and ninety-percent (90%) design plans shall be provided to the Grantee. The City and the Grantee shall, upon the request of either party, meet to discuss the plans, specifications and schedule of the City project at issue at a mutually agreed time in a location determined by the City.
- (iii) After receipt of such notice and such plans and specifications, the Grantee shall complete relocation of its facilities within the Public Right-of-Way at least ten (10) days prior to commencement of the construction phase of the City project at no charge, cost or expense to the City, unless otherwise agreed to within a separate agreement executed by both Parties. Relocation shall be accomplished in such a manner as to accommodate the City's project. In the event of an emergency, the Grantee shall relocate the Grantee Facilities at issue within a time period reasonably specified by the City Engineer.
- (iv) The City and the Grantee may, for each individual City project, enter into an agreement for costs incurred by the City for relocation of Grantee's Facilities and associated work tied to the relocation.
- (v) In the event of an emergency, the Grantee shall relocate the Grantee Facilities at issue within a time period reasonably specified by the County Engineer.

9.7 The Grantee may, after receipt of written notice requesting a relocation of any Grantee Facilities in accordance with Section 9.6, submit to the City proposed written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives are suitable to accommodate the City project. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration. Where, upon the request of the Grantee, the City incurs additional costs in performing any maintenance, operation, or improvement of or to public facilities due to measures taken by the City to avoid damaging or to otherwise accommodate one or more Grantee Facilities, the Grantee shall reimburse the City for the full amount of such additional costs promptly upon receiving the City's invoice for same. In the event the City ultimately determines that there is no reasonable or feasible alternative to relocation, the Grantee shall relocate the Grantee Facilities at issue as otherwise provided in this Section 9.

9.8 The provisions of this Section 9 shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of any Grantee Facility by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay any City projects. The Grantee shall provide certified record drawings (or as-built drawings) detailing the location of Grantee's Facilities within the Public Right-of-Way required to be relocated or removed for the purpose of the non-City project.

9.9 Should relocation be required for a City project pursuant to this Section 9, the Grantee shall be responsible for timely relocation of the Grantee Facilities at issue and the coordination of such relocation with the City (or the City's contractor for the City project). The Grantee shall be fully responsible for the costs of any delays to City projects resulting from relocations of any Grantee Facilities. The Grantee shall indemnify, defend and hold harmless the City from and against any and all claims, lawsuits, or damages, including those brought by a contractor of the City engaged in a City project, arising out of or caused in whole or in part by the location or relocation of one or more Grantee Facilities, as more fully set forth in Section 16 of this Franchise, except to the extent such claims or damages may be due to or caused by the sole negligence or willful misconduct of the City or its employees, contractors or agents.

Section 10. Undergrounding of Grantee Facilities

10.1 The undergrounding requirements of this Section 10 shall apply where the Grantee Facilities consist of cable or any other facilities, equipment or systems which are reasonably capable of being placed underground. Where the Grantee Facilities consist of antennae or other facilities, equipment or systems which are required to remain above ground in order to be functional, the terms and conditions of this Section 10 shall not apply.

10.2 In any area of the City in which there are no aerial facilities other than antennae or other facilities required to remain above ground in order to be functional, or in any area in

which telephone, electric power wires or other cables have been placed underground, the Grantee shall not be permitted to erect poles or to run or suspend wires, cables or other similar facilities thereon, but shall lay all such wires, cables or other facilities underground in the manner required by the County. The Grantee acknowledges and agrees that, even if the City does not require the undergrounding of all or any portion of the Grantee Facilities at the time the Grantee applies for the applicable right-of-way use permit, the City may, at any time in the future, and in the City's reasonable discretion, require the Grantee to convert all or any portion of the aerial Grantee Facilities to underground installation at the Grantee's sole cost and expense.

10.3 Whenever the City may require the undergrounding of the aerial facilities in any area of the City, the Grantee shall underground the aerial Grantee Facilities in that area of the City in the manner specified by the City, and concurrently with the other affected facilities. Where other facilities are present or proposed and involved in the undergrounding project, the Grantee shall only be required to pay its fair share of common costs borne by all facilities, in addition to the costs specifically attributable to the undergrounding of the Grantee Facilities. "Common costs" shall include necessary costs not specifically attributable to the installation or undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of the Grantee Facilities being installed or undergrounded in comparison to the total number and size of all other utility facilities being installed or undergrounded.

Section 11. Maintenance of Grantee Facilities

11.1 The Grantee shall maintain all Grantee Facilities in good condition and repair, in accordance with industry accepted best practices.

11.2 The Grantee shall take necessary steps to maintain a reasonably clear area around all Grantee Facilities installed above-ground within Public Rights-of-Way. A minimum of five (5) feet of clearance will be maintained around each such object so as to provide clear visibility from the roadway for City operations and maintenance. Prior to using any chemical sprays within the Public Rights-of-Way to control or kill weeds and brush, the Grantee must obtain the City's permission. The County may limit or restrict the types, amounts, and timing of applications provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.

Section 12. Hazardous Materials

12.1 The City understands and agrees that the Permitted Use contemplated by the Grantee involves the use by Grantee of certain chemicals and/or materials within the Public Rights-of-Way that are classified as hazardous or otherwise harmful to life, health and/or safety (any such chemical or material, a "Hazardous Material") under one or more applicable federal, state or local laws, rules, regulations or ordinances (collectively, the "Hazardous Materials Laws"). The Grantee shall be permitted to use such Hazardous Materials within the Public Rights-of-

Way as are reasonably necessary for the Grantee's conduct of the Permitted Use and which are customary for the industry in which the Grantee is engaged, PROVIDED, however, that the Grantee's use of any such Hazardous Materials within the Public Rights-of-Way shall at all times be undertaken in full compliance with all Hazardous Materials Laws, including any orders or instructions issued by any authorized regulatory agencies.

12.2 The Grantee covenants and agrees that it will neither cause nor permit, in any manner, the release, seepage or spill of any Hazardous Material upon, into, under, over, across or through any Public Right-of-Way or property adjacent thereto, whether public or private, in violation of any applicable Hazardous Materials Law. Any such release, seepage or spill of any Hazardous Material within the Public Rights-of-Way that is in violation of any applicable Hazardous Materials Law and is caused by Grantee or its directors, officers, agents, employees or contractors, is, referred to as "Release."

12.3 Should a Release occur, the Grantee shall immediately upon receiving notice thereof provide written notice of the Release to the City and the Washington State Department of Ecology. The Grantee agrees it shall indemnify, defend and hold the City, its elected and appointed officials, employees, agents and volunteers (collectively, the "City Parties") harmless from and against any and all claims, lawsuits, actions, judgments, awards, penalties, fines and other damages (including, but not limited to, reasonable attorneys' fees and costs) incurred or suffered by any of the City Parties, to the extent the Release is caused by any act or omission of Grantee or its directors, officers, agents, employees or, contractors (collectively, the "Grantee Parties") within Public Rights-of-Way or property adjacent thereto, whether public or private. Grantee shall be responsible, at its sole cost and expense, for completely cleaning up and remediating, as required by any governmental agency having jurisdiction, any Release caused by any Grantee Party within Public Rights-of-Way or property adjacent thereto, whether public or private. Notwithstanding the Grantee's obligation to completely remediate same, in the event of any Release by a Grantee Party, the City may (but need not), in the interest of protecting the health, safety, welfare and property of the public, immediately take whatever actions it deems necessary or advisable, in its sole discretion, to contain, clean up or remediate the Release at issue. Should the City choose to take any actions pursuant to the preceding sentence, the City shall be entitled to repayment from the Grantee of any and all reasonable costs and expenses incurred by the City in performing such actions.

12.4 Should the Grantee cause a Release as described in Section 12.3 above, failure to promptly comply with all orders or instructions lawfully issued by any authorized regulatory agencies regarding clean-up and remediation shall constitute a material breach of this Franchise, and the City Council may terminate or suspend the Franchise in accordance with Section 23.

Section 13. Dangerous Conditions, Authority for County to Abate

13.1 Whenever the Grantee's excavation, construction, installation, relocation, maintenance, repair, abandonment, or removal of Grantee Facilities authorized by this Franchise has caused

or contributed to a condition that, in the reasonable opinion of the City Engineer, substantially impairs the lateral support of the adjoining road or public or private property, or endangers the public, an adjoining public place, road facilities, City property or private property, the City Engineer may direct the Grantee to remedy the condition or danger to the satisfaction of the City Engineer, within a specified period of time and at the Grantee's sole cost and expense.

13.2 In the event that the Grantee fails or refuses to promptly take the actions directed by the City Engineer, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, in accordance with Section 13.1 above, the City may enter upon the property and take such actions as are reasonably necessary to protect the public, the adjacent roads, or road facilities, or to maintain the lateral support thereof, or actions necessary to ensure the public safety, and the Grantee shall be liable to the City for all reasonable costs and expenses incurred by the City in performing such actions.

Section 14. Removal of Grantee Facilities; Abandonment of Grantee Facilities

14.1 In no event may all or any portion of any Grantee Facility located in, on, under, over, across or through the Public Right-of-Way be abandoned or temporarily abandoned in place by the Grantee.

14.2 Should the Grantee fail to comply with the requirements of Section 14.1 within a reasonable time after the expiration or earlier termination of the Franchise, the Grantee shall be deemed to have deactivated or abandoned the Grantee Facilities without authorization. In the event of any unauthorized abandonment of all or any portion of the deactivated or abandoned Grantee Facilities by the Grantee, the City may, at its election, and in addition to any other remedies or enforcement options available to the City under this Franchise, at law or in equity, remove all or any portion of the deactivated or abandoned Grantee Facilities on behalf of the Grantee and restore the Public Rights-of-Way following such removal. Should the City choose to perform any such removal and restoration activities on the Grantee's behalf, the City may dispose of the removed Grantee Facilities in any manner it deems fit and in accordance with applicable laws, and the Grantee shall be liable to the City for all costs and expenses incurred by the City in performing such removal and restoration activities.

Section 15. Fees, Compensation for Use of Public Rights-of-Way and Taxes

15.1 The Grantee shall be subject to all permit fees allowed by law associated with activities undertaken within Public Rights-of-Way through the authority granted to the Grantee by this Franchise or under applicable provisions of the City Code.

15.2 Grantee shall pay itemized costs and expenses incurred by the City in the examination and report of the proposed franchise.

15.3 In addition, the Grantee shall reimburse the City for any and all documented costs the City reasonably and necessarily incurs in response to an emergency involving any Grantee

Facilities. The Grantee shall promptly reimburse the City, upon submittal by the City of an itemized billing, for the Grantee's proportionate share of all actual, identified costs and expenses incurred by the City in repairing any City facility, or altering such City facility if at the Grantee's request, as the result of the presence of any Grantee Facilities in the Public Right-of-Way. Such costs and expenses shall include, but not be limited to, the Grantee's proportionate share of the costs of City personnel assigned to review construction plans or to oversee or engage in any work in the Public Right-of-Way as a result of the emergency and the presence of the Grantee Facilities in the Public Right-of-Way. Any and all costs will be billed on an actual cost basis. The billing may be on an annual basis, but the City shall provide the Grantee with the City's itemization of costs at the conclusion of each project for informational purposes.

Section 16. Hold Harmless and Indemnification

16.1 Grantee agrees to indemnify, defend, and hold harmless any City Party (as such term is defined in Section 12 above) from any and all claims, demands, liability, suits, and judgments, including costs of defense thereof, for bodily injury to persons, death, or property damage arising out of the acts or omissions of any of the Grantee Parties (as such term is defined in Section 12 above) in the use of a Public Right-of-Way pursuant to this Franchise, except to the extent caused by the sole negligence or willful misconduct of any City Party. This covenant of indemnification shall include, but not be limited to, any and all claims, demands, liability, suits, and judgments arising out of the placement of Grantee's existing utility fixtures and any and all third party claims, demands, liability, suits, and judgments arising out of any of the Grantee Parties' failure to complete all utility related adjustments, relocations, repairs, or work in accordance with this Franchise and the work plan and schedule agreed to by the City and Grantee, except to the extent caused by the sole negligence or willful misconduct of any City Party. In the event of liability for damages arising out of bodily injury to persons, death or property damage caused by or resulting from the concurrent negligence of Grantee and the City, its officers, employees and agents, Grantee's liability hereunder shall be only to the extent of Grantee's negligence.

16.2 In the event the City incurs attorneys' fees, legal expenses, or other costs to enforce the provisions of this Section 16 against Grantee, all such fees, expenses, and costs shall be recoverable from Grantee to the extent the City prevails in such enforcement action.

16.3 It is specifically and expressly understood that, solely to the extent required to enforce the indemnification, defense and hold harmless obligations contained in this Section 16, Grantee waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees. This waiver has been mutually negotiated by the parties.

16.4 The City shall give Grantee timely written notice of the matter of any claim or of the commencement of any such action, suit or other proceeding covered by the indemnification,

defense and hold harmless obligations contained in this Section 16. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the right and duty to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully therein.

16.5 The City's permitting approval, inspection, lack of inspection, or acceptance of any work performed by the Grantee Parties in connection with work authorized on Grantee Facilities, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise, shall not be grounds for avoidance of any of the indemnification, defense and hold harmless obligations contained in this Section 16.

16.6 The indemnification, defense and hold harmless obligations contained in this Section 16 shall survive the expiration, abandonment or termination of this Franchise.

Section 17. Limitation of County Liability

The City's administration of this Franchise shall not be construed to create the basis for any liability on the part of the City Parties, except for and only to the extent of the City's negligence or willful misconduct.

Section 18. Insurance

18.1 Insurance Requirements

A. Insurance Required

Grantee shall procure, and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Grantee or its employees. The Grantee shall pay the costs of such insurance. The Grantee shall require all contractors and subcontractors to obtain and maintain substantially the same coverage as required of Grantee, and furnish separate certificates of insurance from each contractor/subcontractors as evidence of compliance with the insurance requirements of this Franchise.

The Grantee is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Grantee to comply with the insurance requirements stated herein shall constitute a material breach of this Franchise.

Each insurance policy shall be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior City approval. If coverage is approved and purchased on a "claims made" basis, the Grantee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less

than three (3) years from the date of Franchise termination, and/or conversion from a "claims made" form to an "occurrence" coverage form.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(ies). Nothing contained in this provision shall affect and/or alter the application of any other provision contained within this Franchise.

B. Risk Assessment by Grantee

By requiring such insurance, the City shall not be deemed or construed to have assessed the risks that may be applicable to the Grantee under this Franchise, nor shall such minimum limits be construed to limit the limits available under any insurance coverage obtained by the Grantee. The Grantee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

C. Minimum Scope and Limits of Insurance. Coverage shall be at least as broad as and with limits not less than the following:

(i) General Liability

Insurance Services Office form number (CG 00 01) or its substantial equivalent covering COMMERCIAL GENERAL LIABILITY including XCU coverage: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$5,000,000 general aggregate limit.

(ii) Automobile Liability

Insurance Services Office form number (CA 00 01) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8 or 9, or its substantial equivalent for COMMERCIAL AUTOMOBILE LIABILITY covering all owned, non-owned and hired vehicles: \$1,000,000 combined single limit per accident for bodily injury and property damage if the use of motor vehicles is contemplated.

(iii) Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington.

(iv) Stop Gap/Employers Liability

Coverage shall be at least as broad as the indemnification, protection provided by the Workers' Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy: \$1,000,000.

D. Minimum Limits of Insurance - Construction Period

Prior to commencement of Construction and until Construction is complete and approved by the Grantee and the City, the Grantee shall cause the Construction Contractor and related professionals to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to this Franchise. The Grantee and the City shall be named as additional insureds on liability policies except Workers Compensation and Professional Liability. The cost of such insurance shall be paid by the Grantee and/or any of the Grantee's contractor/subcontractors. The Grantee shall cause the Construction Contractor and related professionals to maintain limits no less than the following:

- (i) Commercial General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$2,000,000 general aggregate.
- (ii) Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage.
- (iii) Professional Liability, Errors & Omissions: \$1,000,000, Per Claim and in the Aggregate.
- (iv) Workers Compensation: Statutory requirements of the state of residency.
- (v) Stop Gap or Employers Liability Coverage: \$1,000,000.

E. Other Insurance Provisions

The insurance policies required in this Franchise are to contain, or be endorsed to contain, the following provisions:

- (i) All Liability Policies except Professional and Workers' Compensation.
 - a. The County, its officers, officials, and employees, shall be included as an additional insured as their interest may appear under this Agreement and with respect to liability arising out of activities performed by or on behalf of the Grantee/contractor in connection with this Franchise. Such coverage shall include Products-Completed Operations.

- b. To the extent of the Grantee's/contractor's negligence, the Grantee's/contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, and employees. Any insurance and/or self-insurance maintained by the City, its officers, officials, employees, or agents shall not contribute with the Grantee's insurance or benefit the Grantee in any way.
- c. The Grantee's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(ii) All Policies

Upon receipt of notice from its insurer, Grantee shall provide the City with thirty (30) days prior written notice of cancellation.

F. Acceptability of insurers

Unless otherwise approved by the City, insurance is to be placed with insurers with a Bests' rating of no less than A-VII.

Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by the City.

If, at any time, the foregoing policies shall fail to meet the above requirements, the Grantee shall, upon notice to that effect from the City, promptly obtain a new policy, and shall submit the same to the City, with appropriate certificates and blanket additional insured endorsements, for approval.

G. Verification of Coverage

The Grantee shall furnish the City with certificates of insurance and blanket additional insured endorsements required by this Franchise. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates for each insurance policy are to be on forms reasonably approved by the City prior to the commencement of activities associated with the Franchise. The City reserves the right to require complete certified copies of all required insurance policies at any time.

H. Subcontractors

The Grantee shall require all subcontractors to obtain and maintain substantially the same coverage with substantially the same limits as required of Grantee and provide certificates of insurance and additional insured endorsements from each subcontractor.

I. Insurance Review

In consideration of the duration of this Franchise, the parties agree that the Insurance section herein, at the discretion of the City Risk Manager, may be reviewed and adjusted with each amendment and within ninety (90) days of the end of the first five (5) year period of the term of this Franchise and the end of each successive five (5) year period thereafter. Any adjustments made as determined by the City Risk Manager, shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the first day of each successive five (5) year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of the Grantee. Any failure by the City to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

18.2 Grantee shall furnish the City with original certificates and blanket additional insured endorsements evidencing the insurance requirements of the Grantee before commencement of the work.

18.3 In satisfaction of the insurance requirements set forth in this Section 18, Grantee may self-insure against such risks in such amounts as are consistent with good utility practice. Grantee shall provide the City with reasonable written evidence that Grantee is maintaining such self-insurance.

Section 19. Performance Security

Before undertaking any work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, the Grantee shall, upon the request of the City through its permit process, provide a security device in a sum to be set and approved by the City Engineer in accordance with City Code. Grantee may, upon approval of the City Engineer, provide a Franchise security device or Franchise bond to cover all work performed by Grantee under this Franchise in such amount as the City Engineer deems adequate.

Section 20. Annexation

If any Public Right-of-Way, or portion thereof, is incorporated into the limits of any city or town, it shall not be subject to the terms of this Franchise.

Section 21. Vacation

If any Public Right-of-Way, or portion thereof, is vacated, it shall not be subject to the terms of this Franchise. The City may retain a utility easement as allowed under RCW 36.87.140 when a

Public Right-of-Way, or portion thereof, is vacated. The Grantee may request the City retain a utility easement; however in no case shall the City be obligated to retain such an easement. The City shall not be liable for any damages or loss to the Grantee by reason of such vacation and termination.

Section 22. Assignment

22.1 Neither this Franchise nor any interest therein shall be leased, sold, partitioned, transferred, assigned, disposed of, or otherwise subject to a change in the identity of the Grantee (each such activity, a "Transfer"), in whole or in part, in any manner, without the prior written consent of the City Council, which consent will not be unreasonably withheld, delayed or conditioned. Should any such Transfer be approved by the City, then each and every one of the provisions, conditions, regulations and requirements contained in this Franchise shall be binding upon the approved transferee beginning on the date of the Transfer, and all privileges, as well as all obligations and liabilities of the Grantee shall inure to such transferee equally as if such transferee was specifically mentioned wherever the Grantee is named herein.

22.2 In the case of a Transfer to secure indebtedness, whether by mortgage or other security instrument, the City's consent shall not be required unless and until the secured party elects to realize upon the collateral. The Grantee shall provide prompt, written notice to the County, of any assignment to secure indebtedness.

22.3 Any attempt by Grantee to Transfer this Franchise in violation of this Section 22 shall constitute a material breach by Grantee.

Section 23. Termination, Revocation, and Forfeiture

If the Grantee, following written notice from the City of any breach of the Franchise and at least thirty (30) days thereafter to cure such breach: (i) defaults on any material term or condition of this Franchise; (ii) willfully violates or fails to comply with any of the provisions of this Franchise; or, (iii) through willful misconduct or gross negligence fails to heed or comply with any notice given the Grantee by the City under the provisions of this Franchise, then the Grantee shall, at the election of the City Council, forfeit all rights conferred hereunder and the Franchise may be terminated by the City Council. Upon termination for any such cause, all rights of the Grantee granted hereunder or under any right-of-way use permit shall cease, and the Grantee shall immediately commence to remove or, with approval of the City Engineer, abandon in place all of the Grantee Facilities from the Public Rights-of-Way in accordance with Section 14 above.

Section 24. Remedies to Enforce Compliance; No Waiver

24.1 In lieu of termination, revocation or forfeiture as provided in Section 23, and without prejudicing any of its other legal rights and remedies, the City may elect to obtain an order from the Superior Court or other court, tribunal, or agency having competent jurisdiction compelling the Grantee to comply with the provisions of this Franchise and to recover damages and costs

incurred by the City by reason of the Grantee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force the Grantee and/or its permitted successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the County shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

24.2 Failure of the City to exercise any rights or remedies under this Franchise shall not constitute a waiver of any such right or remedy and shall not prevent the City from pursuing such right or remedy at any future time.

24.3 Nothing in this Franchise is or was intended to confer third-party beneficiary status on any person or entity to enforce the terms of this Franchise.

Section 25. County Ordinances and Regulations - Reservation of Police Power

Nothing in this Franchise shall restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of the Franchise, including, but not limited to, any ordinances adopted under the City's police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations, including design standards, and utility accommodation policies, the location, elevation, manner of construction, and maintenance of any Grantee Facilities located within any Public Right-of-Way, and the Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law. In the event of a conflict between the regulatory provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.

Section 26. Eminent Domain, Powers of the People

This Franchise is subject to the power of eminent domain and the right of the City Council or the people acting for themselves through initiative or referendum to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 27. Survival and Force Majeure

27.1 Until such time as all of the Grantee Facilities have been removed from the Public Rights-of-Way in accordance with Section 14.1 above, or have been deactivated or abandoned in place in accordance with Sections 14.2 and 14.3 above, all of the provisions, conditions and requirements contained in the following sections of this Franchise shall survive the expiration, revocation, forfeiture or early termination of the Franchise: (i) Section 4 (Regulation of Use; Permits Required); (ii) Section 5 (Emergency Work); (iii) Section 6 (Compliance with Applicable Laws; Performance Standards); (iv) Section 7 (Restoration of Public Rights-of-Way); (v) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (vi) Section 10

(Undergrounding of Grantee Facilities); (vii) Section 12 (Hazardous Materials); (viii) Section 13 (Dangerous Conditions, Authority for County to Abate); (ix) Section 14 (Removal of Grantee Facilities; Abandonment of Grantee Facilities); (x) Section 15 (Fees, Compensation for Use of Public Rights-of-Way and Taxes); (xi) Section 16 (Hold Harmless and Indemnification); (xii) Section 17 (Limitation of County Liability); (xiii) Section 18 (Insurance); (xiv) Section 19 (Performance Security); and, (xv) Section 24 (Remedies to Enforce Compliance; No Waiver).

27.2 After such time as all Grantee Facilities have been either removed from the Public Rights-of-Way or abandoned/deactivated in place to the City's satisfaction pursuant to Section 14 above, only the following provisions shall survive the expiration or earlier termination of the Franchise: (i) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (ii) Section 12 (Hazardous Materials); (iii) Section 16 (Hold Harmless and Indemnification); and (iv) Section 17 (Limitation of County Liability).

27.3 If the Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of a Force Majeure, then Grantee's performance shall be excused 'during a Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Grantee shall promptly perform its obligations in an orderly and expedited manner using industry accepted best practices. Grantee's performance shall not be excused by economic hardship nor by the misfeasance or malfeasance of its directors, officers, or employees.

27.4 For the purposes of this Franchise, "Force Majeure" means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen) that delays or prevents performance by the Grantee of any of its obligations under this Franchise, but only to the extent that and for so long as the event or circumstance is beyond the reasonable control of the Grantee and shall include, without limitation; all of the following events and circumstances: (i) acts of nature, including volcanic eruption, landslide, earthquake, flood, lightning, tornado or other unusually severe storm or environmental conditions, perils of the sea, wildfire or any other natural disaster; (ii) acts of public enemies, armed conflicts, act of foreign enemy, acts of terrorism (whether domestic or foreign, state-sponsored or otherwise), war (whether declared or undeclared), blockade, insurrection, riot, civil disturbance, revolution or sabotage; (iii) any form of compulsory government actions, acquisitions or condemnations, changes in applicable law, export or import restrictions, customs delays, rationing or allocations; (iv) accidents or other casualty, damage, loss or delay during transportation, explosions, fire, epidemics, quarantine or criminal acts; (v) inability, after the use of commercially reasonable efforts, to obtain from any governmental authority any permit, approval, order, decree, license, certificate, authorization or permission to the extent required by applicable law; (vi) inability, after the use of commercially reasonable efforts, to obtain any consent or approval required by the Franchise; and, (viii) third-party litigation contesting all or any portion of the Franchise or Grantee's rights under this Franchise.

Section 28. Governing Law and Stipulation of Venue

This Franchise and all use of Public Rights-of-Way granted herein shall be governed by the laws of the State of Washington, unless preempted by federal law. Any action relating to this Franchise shall be brought in the Superior Court of Washington for King County, Maleng Regional Justice Center, or in the case of a federal action, the United States District Court for the Western District of Washington at Seattle, unless an administrative agency has primary jurisdiction.

Section 29. Severability

If any section, sentence, clause, phrase or provision of this Franchise or the application of such provision to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, phrase or provision of this Franchise nor the application of the provision at issue to any other person or entity.

Section 30. Notice and Emergency Contact

Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

CITY OF SEATAC
Attn.: Public Works Department
4800 S. 188th Street
SeaTac, WA 98188-8605

MOBILITIE
Attn.: Legal Department
660 Newport Center Drive
Suite 200
Newport Beach, CA 92660

With a copy to:

MOBILITIE
Attn.: Asset Management
660 Newport Center Drive
Suite 200
Newport Beach, CA 92660

The Grantee shall also provide the County a current emergency contact name (or title) and phone number available 24-hours a day, seven days a week. The Grantee shall promptly notify the County of any change in the notice address or emergency contact (or title) and phone number.

EMERGENCY CONTACT: _____

Section 31. Acceptance

Within ninety (90) days after the passage and approval of this Franchise by the City Council, the Franchise may be accepted by the Grantee by its filing with the City Council an unconditional written acceptance thereof. Failure of the Grantee to so accept the Franchise within said period of time shall be deemed a rejection thereof by the Grantee, and the rights and privileges herein granted shall automatically cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

Section 32. Effective Date

This Franchise shall take effect, if at all, on the date on which each and every one of the following conditions have been met (the "Effective Date"): (i) ten (10) days have passed since the City Manager executed this Franchise on behalf of the City; (ii) the Grantee executes a copy of this Franchise and returns it to the City Manager within the time provided in Section 31 above; (iii) the Grantee presents to the City acceptable evidence of insurance as required in Section 18 above; and (iv) the Grantee pays all applicable fees as set forth in Section 15 above.

DATED this ____ day of _____, 2018.

Joseph Scorcio, AICP
City Manager, City of SeaTac

Approved as to Form Only:

Mary Mirante Bartolo
City Attorney
Date: _____

ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, Mobilitie, LLC covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the City of SeaTac, the SeaTac Municipal Code, and this Franchise.

Dated this _____ day of _____, 2018

MOBILITIE, LLC

Printed Name: _____
Title: _____

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the Grantee returned a signed copy of this Franchise to the City Council within the time provided in Section 31; (2) the Grantee has presented to the City acceptable evidence of insurance as required in Section 18 of this Franchise; and, (3) the Grantee has paid all applicable processing costs and fees as set forth in Section 15 of this Franchise.

Comparison Table between Small Cellular Service Franchise Agreements

Utility	Section	RCM 6/12/18 Packet	TPW Committee 6/21/18 Packet
Mobilitie	3.1	Initial term of the Franchise as 10 years	Initial term of the Franchise as 5 years
Verizon		Not included in packet	Initial term of the Franchise as 5 years
AT&T		Not included in packet	Initial term of the Franchise as 5 years
Mobilitie	3.4	Term allowing Grantee to terminate Franchise for any reason in their sole discretion upon 30 days notice to City	Section 3.4 was struck from Franchise and is not included
Verizon		Not included in packet	Section 3.4 is not included
AT&T		Not included in packet	Section 3.4 is not included
Mobilitie	8.1	Undefined time requirements to submit record documents within right-of-way; Right to review records lasted 6 years from expiration/termination of Franchise	Defined submitting record documents for work within ROW within 120 days after completion; 30-day turnaround to submit supplemental documents requested by the City; Right to review records lasts for 2 years from expiration/termination of Franchise
Verizon		Not included in packet	Same as Mobilitie Franchise
AT&T		Not included in packet	Same as Mobilitie Franchise
Mobilitie	9.1	Undefined time requirements to relocate facilities	Defined time requirements for relocating facilities within 120 days after official notice
Verizon		Not included in packet	Same as Mobilitie Franchise
AT&T		Not included in packet	Same as Mobilitie Franchise
Mobilitie	9.6(i)	90 day written notice prior to commencement of the construction phase of City Project	120 day written notice prior to commencement of the construction phase of City Project
Verizon		Not included in packet	Same as Mobilitie Franchise
AT&T		Not included in packet	Same as Mobilitie Franchise
Mobilitie	11.1	No reference to graffiti removal	Graffiti removal from Grantee's facility language included
Verizon		Not included in packet	Same as Mobilitie Franchise
AT&T		Not included in packet	Same as Mobilitie Franchise
Mobilitie	14.2	Separate section	Consolidated 14.1 and 14.2 into a single section
Verizon		Not included in packet	Same as Mobilitie Franchise
AT&T		Not included in packet	Same as Mobilitie Franchise
Mobilitie	17.1	Addressess limitation of County Liability	Changed to limitations of City liability; added language that neither party will be liable under Franchis for consequential, indirect, or punitive damages for any causes of action
Verizon		Not included in packet	Same as Mobilitie Franchise
AT&T		Not included in packet	Same as Mobilitie Franchise
Mobilitie	18	Insurance requirements	Adjusted to address each specific utility provider
Verizon		Not included in packet	Adjusted to address each specific utility provider
AT&T		Not included in packet	Adjusted to address each specific utility provider
Mobilitie	22	Stopped at Section 22.3	Added Sections 22.4 and 22.5
Verizon		Not included in packet	Same as Mobilitie Franchise
AT&T		Not included in packet	Same as Mobilitie Franchise