



## ORDINANCE NO. 28454

1 AN ORDINANCE granting a non-exclusive franchise to Seattle SMSA Limited  
2 Partnership, a Delaware limited partnership, d/b/a Verizon Wireless, to  
3 construct, operate, and maintain a telecommunications system in the City  
4 of Tacoma; setting forth provisions, terms and conditions of the grant of  
5 franchise; specifically making such grant subject to the provisions of  
6 Title 16B, Title 9, and Title 10 of the Tacoma Municipal Code, as well as the  
7 Tacoma City Charter; providing for City regulation of the  
8 Telecommunications System; prescribing liquidated damages and certain  
9 other remedies for violation of franchise provisions in addition to those  
10 specified pursuant to the Municipal Code and the City of Tacoma Charter.

11 WHEREAS Seattle SMSA Limited Partnership, a Delaware limited  
12 partnership, d/b/a Verizon Wireless, registered to do business in the state of  
13 Washington (“Verizon Wireless” or “Franchisee”) is a telecommunications company  
14 currently involved in the business of operating a telecommunications network  
15 utilizing wireless technology, and

16 WHEREAS, as part of expanding such network, Verizon Wireless desires to  
17 obtain a franchise to operate its telecommunications network in City of Tacoma  
18 right-of-way, and

19 WHEREAS Verizon Wireless has applied to the City to place, with  
20 appropriate, additional City authorization and subject to City zoning and land use  
21 regulations, wireless communication facilities in certain locations in City  
22 right-of-way, and

23 WHEREAS the City Council has determined to grant such a franchise to  
24 Verizon Wireless upon those certain terms and conditions which the City Council  
25 deems necessary due to the unique nature of wireless communication facilities as  
26 set forth herein, and



WHEREAS this City of Tacoma Telecommunications Franchise Ordinance

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Now, Therefore,



BE IT ORDAINED BY THE CITY OF TACOMA:

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Section 1. Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein; words not defined herein which are defined in Title 16B of the Tacoma Municipal Code (“TMC”) shall have the same meaning or be interpreted as provided in Title 16B. Words not defined here or in Title 16B shall be construed consistently with Title 47 of the United States Code, and if not therein, they shall have their common and ordinary meaning. A reference to any Title of the TMC or to the City’s Charter refers to the same as may be amended from time to time.

1.1 “City” means the City of Tacoma, a municipal corporation of the state of Washington, and all departments, divisions, and agencies thereof, including Tacoma Public Utilities.

1.2 “City Manager” means the City Manager or the City Manager’s designee.

1.3 “Communications system” refers to a telecommunications system.

1.4 “Construction, operation, or maintenance” and similar formulations of these terms mean the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement, repair, restoration, upgrade, removal, or components thereof, including relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.

1.5 “Customer” means any Person or entity who legally receives within the corporate limits of the City any one or more of the services provided by the Telecommunications System.



1.6 "Facilities" or "Installations" are and refer to and include, but are not limited to, plant, systems, improvements, and equipment owned, leased, or otherwise used by Franchisee, such as wireless communication antennas, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, cut-off switches, electric meters, coaxial cables, poles, fiber cables, wires, telecom demarcation boxes, and related fixtures, equipment, underground circuits, and conduit in, on, over, through, across, above, along, or below Public Rights-of-Way and other property necessary or convenient for the transmission and distribution of communications service where such facilities are located.

"Facilities" or "Installations," when used without a modifier, encompass both Overhead Facilities/Installations and Underground Facilities/Installations. Nothing in this definition, or anything else in this Franchise shall be interpreted as authorizing Franchisee to construct its own support system for Overhead Facilities or any other above-ground Facilities in the Franchise Area without the additional authorizations required herein below and as proscribed by City zoning and land use regulation ordinances.

1.7 "Franchise" means the rights expressly granted by this Franchise and conditioned as set forth herein and under the TMC and City Charter.

1.8 "Franchise Area" means that area within the present and future corporate limits of Tacoma.

1.9 "Franchisee" means Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless, registered to do business in the state of



Washington with its principal office located at 180 Washington Valley Road,  
1 Bedminster, NJ 07921.

2           1.10 "Gross Receipts," for purposes of this Franchise, means any and all  
3 receipts or income received directly or indirectly by Franchisee which is derived  
4 from the operation of its System in the City, less uncollectibles. Gross Receipts  
5 shall include, by way of example and not limitation, revenues from its  
6 Telecommunications Service, all fees, late fees, installation and connection fees,  
7 upgrade and downgrade fees, and rental fees. The term Gross Receipts shall not  
8 include any taxes on services furnished by Franchisee imposed by any  
9 municipality, state, or other governmental unit and collected by Franchisee for such  
10 governmental unit, nor shall the term include any wholesale services provided by  
11 Franchisee upon which fees or taxes have already been levied within the City of  
12 Tacoma.

13           1.11 "Operator," when used with reference to a System, refers to a Person  
14 (a) who provides service over a Communications System and directly or through  
15 one or more affiliates owns a significant interest in such System; or (b) who  
16 otherwise controls or is responsible for, through any arrangement, the  
17 management and operation of such a System. A Person that operates under  
18 agreement of a Telecommunications System or a specific portion of a  
19 Telecommunications System to provide Telecommunications Services shall be  
20 treated as an Operator for purposes of this Franchise.

21           1.12 "Overhead Facilities" refers to existing electric poles, light poles,  
22 and antenna towers located above the surface of the ground within the Public  
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1 Rights-of-Way, including the underground supports and foundations for such  
2 Overhead Facilities.

3 1.13 "Person" includes any individual, corporation, partnership, association,  
4 joint stock company, trust, or any other legal entity, but not the City for purposes  
5 hereof.

6 1.14 "Personal Wireless Facilities" are Facilities which are above ground  
7 such as wireless communication antennas, transmitters, receivers, antenna  
8 structures and other types of installations used for the provision of personal  
9 wireless services as that term is defined in Section 704 of the 1996  
10 Telecommunications Act.

11 1.15 "Public Rights-of-Way" mean the public streets and easements over  
12 which, under the City Charter, the TMC, City ordinances, and applicable laws, the  
13 City has authority to grant Franchises, permits, or Licenses for use thereof or has  
14 regulatory authority there over, but expressly excluding railroad  
15 rights-of-way/crossings, airport, and harbor areas. Public Rights-of-Way, for the  
16 purpose of this Franchise, also do not include buildings, parks, poles, conduits, or  
17 similar facilities or property owned by or leased to the City, including, by way of  
18 example and not limitation, Overhead Facilities in the Public Rights-of-Way.

19 1.16 "System" means the Telecommunications System.

20 1.17 "Telecommunications Service" or "Service" means the transmission for  
21 hire of information in electronic or optical form, including, but not limited to, voice,  
22 video, or data, whether or not the transmission medium is owned by the provider  
23 itself. Telecommunications Service includes wireless communication services and  
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1 telephone service, but does not include cable TV or commercial video service or  
2 over-the-air broadcasts to the public-at-large from facilities licensed by the Federal  
3 Communications Commission or any successor thereto.

4 1.18 "Telecommunications System" means a tangible facility that is used to  
5 provide one or more Telecommunications Services, any portion of which occupies  
6 Public Rights-of-Way. The term Telecommunications System, by way of example  
7 and not limitation, includes wireless communication antennas, wireless  
8 communication facilities, Personal Wireless Facilities, wires, equipment cabinets,  
9 guys, conduit, radio transmitting towers, poles, other supporting structures, and  
10 associated and appurtenant facilities used to transmit telecommunications signals.  
11 The term Telecommunications System includes all devices mounted on Overhead  
12 Facilities (where separately authorized by an attachment agreement) in the Public  
13 Rights-of-Way through which Telecommunications Services are originated or  
14 terminated. An Open Video System is not a Telecommunications System to the  
15 extent that it provides only video services; a Cable System is not a  
16 Telecommunications System to the extent that it provides only Cable Service. The  
17 term Telecommunications System includes any of the tangible components of a  
18 Telecommunications System which occupies Public Rights-of-Way.

19 1.19. "Telephone Service" means the provision of access to a local  
20 telephone network, local telephone network switching service, intrastate toll  
21 service, or coin telephone service, or providing telephonic, video, data, or similar  
22 communication or transmission for hire via a local telephone network, toll line,  
23 channel, cable, microwave, or similar communication or transmission system by  
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1 any person. Telephone Service includes intrastate or interstate service, including  
2 toll service, originating from, or received on, communications equipment or  
3 apparatus in this state if the charge for the service is billed to a person in this state.  
4 Telephone Service does not include the providing of Competitive telephone service  
5 as defined in TMC 6A.40.030, the providing of cable television service, or the  
6 providing of broadcast services by radio or television stations.

7 1.20 "Underground Facilities" refers to electric utility, fiber, conduit, and  
8 telecommunications Facilities located under the surface of the ground, excluding  
9 the underground foundations or supports for Overhead Facilities.  
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11 Section 2. Franchise.

12 2.1 Grant of Franchise. The City hereby grants to Franchisee a  
13 non-exclusive Franchise which, once it becomes effective, shall authorize  
14 Franchisee to use the City's Public Rights-of-Way within the Franchise Area to  
15 construct, maintain, and operate a Telecommunication System to provide  
16 Telecommunication Service, and to use the City's Public Rights-of-Way as  
17 authorized herein. This grant of Franchise does not by itself grant any right to  
18 construct new Facilities without prior City approval, which will require an additional  
19 site-specific or master siting agreement in conformance with City zoning and land  
20 use ordinances and applicable state laws.  
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23 This grant is subject to and must be exercised in strict accordance with  
24 and subject to this Franchise Agreement, the Telecommunications Act  
25 of 1996 § 253(c), applicable laws of the state of Washington, including, but not  
26 limited to, RCW 47.24.020, RCW 35.22.280, RCW 35.99.020 and other related



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laws, Title 16B and other applicable provisions of the TMC, and the Tacoma City Charter, including, but not limited to, the provisions set forth in Article VIII of the Charter and TMC Title 13, and this Franchise may be revoked under Section 2.5 if it is not so exercised. The exercise of any rights pursuant to this Franchise is subject to the exercise of the City's police powers and other regulatory powers as the City may have or obtain in the future, and all rights granted herein must be exercised in strict accordance with applicable laws, including, by way of example and not limitation, zoning codes and permitting requirements. No rights shall pass to Franchisee by implication. This Franchise shall constitute both a right and an obligation for Franchisee to provide the services of the Telecommunications System in accordance with the provisions of this Franchise in order to continue to use City Rights-of-Way.

The grant of this Franchise is limited to the purpose of Franchisee providing Telecommunications Service. This Franchise does not include permission to provide cable service, as defined in 47 U.S.C. § 522, multichannel video programming, open video systems, or uses other than Telecommunications Service.

Notwithstanding the above grant to use Public Rights-of-Way, no Public Rights-of-Way shall be used by Franchisee if the City, in its opinion, determines that such use is inconsistent with the terms, conditions, or provisions by which such Public Right-of-Way was created or dedicated, or presently used under applicable laws.



1 In the event of any conflict between a provision in this Franchise and any  
2 provision of the City Charter, which Charter is incorporated herein by reference,  
3 the applicable provision of the Charter shall control over any inconsistent provision  
4 of this Franchise.

5 2.2 Franchise Term. The term of the Franchise shall be ten years  
6 (commencing on the Effective Date defined in Section 7.6 below), unless  
7 terminated sooner in accordance with this Franchise, Title 16B, or the City Charter.  
8 At any time not more than 180 days nor less than 90 days before the expiration of  
9 the term, Franchisee may apply to extend or renew the Franchise as provided in  
10 Title 16B.02.100 and the City Charter, unless either party expresses its intention in  
11 writing to terminate this Franchise at the conclusion of the current ten (10) year  
12 term. If the parties fail to formally extend, renew, or terminate the Franchise prior  
13 to the expiration of its term or any extension, the Franchise shall be extended on a  
14 month-to-month basis until the Franchise is renewed, terminated, or extended.  
15

16 2.3 Franchise Non-Exclusive. The Franchise granted herein shall be non-  
17 exclusive.  
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19 2.4 Transfers, Generally.

20 A. Any transfer of this Franchise, as the term "Transfer" is defined  
21 in TMC Title 16B.01.030.Y, shall be accomplished in accordance with TMC  
22 Title 16B.02.120. Any Transfer not made in accordance with TMC Title 16B.02.120  
23 may be considered a substantial violation of this Franchise by the City and may  
24 subject the Franchise to termination proceedings by the City as provided herein and  
25 in Title 16B.  
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1 B. Applications for approval of any Transfer shall be filed in  
2 accordance with procedures set out in Title 16B of the TMC.

3 C. Franchisee shall, within 60 days of the closing date of any  
4 Transfer, file with the City Clerk a copy of the deed, agreement, contract,  
5 mortgage, lease, SEC filing, or other written instrument evidencing such sale,  
6 lease, contractual agreement, mortgage, assignment or Transfer, certified and  
7 sworn to as correct by Franchisee, subject to any confidentiality provisions in any  
8 such document. Every such Transfer, whether voluntary or involuntary, may be  
9 deemed void and of no effect as to the effectiveness of this Franchise by the City  
10 unless Franchisee files the required copy within the 60-day period.  
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12 D. The requirements of this section shall not be deemed to prohibit  
13 the use of Franchisee's property as collateral for security in financing the  
14 construction or acquisition of all or part of the Telecommunications System  
15 franchised hereunder, provided that no such security shall purport to attach to the  
16 City's real property interest in the Public Right-of-Way or any other City interest.  
17 In addition, no such arrangement may be made if it would in any respect under  
18 any condition prevent the Operator or any successor from complying with the  
19 Franchise and applicable law. Any mortgage, pledge, or lease shall be subject to  
20 and subordinate to the rights of the City under this Franchise, and other applicable  
21 law.  
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24 E. Notwithstanding anything to the contrary contained in this  
25 Franchise, the City's consent shall not be required for a transfer to an intra-  
26 company Affiliate (as such term is defined in TMC 16B.01.030), provided that the



1 transfer is in compliance with the terms of TMC 16B.02.102.F, including, but not  
2 limited to, providing the City notice of such intended transfer at least 60 days prior  
3 to its occurrence.

4 2.5 Revocation. In addition to any rights set out elsewhere in this  
5 Franchise, the City Charter, or Title 16B, subject to the notice and cure provisions  
6 contained in Title 16B, Section 16B.05.100, the City reserves the right to declare a  
7 forfeiture or otherwise revoke this Franchise, and all rights and privileges  
8 pertaining thereto, as provided in Title 16B or in the event that:

9 A. Franchisee is in non-compliance with a material provision of this  
10 Franchise; or  
11

12 B. Franchisee is found to have engaged in any actual or attempted  
13 fraud or deceit upon the City, Persons, or Customers in the City; or  
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15 C. Franchisee fails to obtain and maintain any permit required by  
16 any federal or state regulatory body or by the City, relating to the construction,  
17 maintenance, and operation of the Facilities within the Public Rights-of-Way within  
18 the Franchise Area; or  
19

20 D. At any time during the term of the Franchise, Franchisee fails to  
21 provide and maintain all of the securities required under this Franchise, including,  
22 but not limited to, the performance bond required under this Franchise; fails to  
23 maintain the insurance required by this Franchise; or fails to satisfy the indemnity  
24 set out in this Franchise; or if any guarantor of Franchisee revokes its guarantee or  
25 fails to satisfy or becomes unable to satisfy its obligations under such guarantee.  
26



1 E. The procedures for revocation and forfeiture shall be governed by  
2 Title 16B, Section 16B.05.100. Before the Franchise is revoked, Franchisee shall  
3 be given notice and an opportunity to cure at least equivalent to that required by  
4 the terms of this Franchise, or if not specified herein, then as provided for in  
5 Title 16B as of the effective date of this Franchise (except in those cases where  
6 notice and opportunity to cure are not required, as specified in Sections 2.5.F(1)  
7 and 4.3.D herein below), and shall be accorded at least an opportunity to be heard  
8 that provides at least the due process protections required by Title 16B as of the  
9 effective date of this Franchise, which opportunities and protections are set out in  
10 Section 2.5.F below.

12 F. (1) Where, after notice and providing Franchisee an  
13 opportunity to be heard (if such opportunity is requested by Franchisee), the City  
14 finds that there has been an act or omission that would justify revocation of the  
15 Franchise, the City may make an appropriate reduction in the remaining term of  
16 the Franchise or revoke the Franchise. However, the Franchise may only be  
17 revoked if Franchisee (a) was given written notice of the default; and (b) 30 days to  
18 cure the default; and (c) Franchisee failed to cure the default, or to propose a  
19 schedule for curing the default acceptable to the City where it is impossible to cure  
20 the default in 30 days. The required written notice shall be given before the City  
21 conducts the proceeding required by this paragraph. No opportunity to cure is  
22 required for three (3) or more repeated violations of the same material provision of  
23 the Franchise within a calendar year, and fraud, which shall be deemed incurable.  
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1 (2) Notwithstanding the foregoing, the City may declare a  
2 Franchise forfeited without opportunity to cure when Franchisee: (a) fails to begin  
3 to exercise its rights to use the Public Rights-of-Way for its Telecommunication  
4 Services within one year of the Effective Date (defined in Section 7.6) of this  
5 Franchise, (b) stops using the Public Rights-of-Way for its Telecommunication  
6 Services for a period of one (1) year, (c) transfers without the prior consent of the  
7 City as and when required in the Franchise, or (d) is found by a court or regulatory  
8 body with appropriate jurisdiction to have defrauded or attempted to defraud the  
9 City or Franchisee's customers within the City. Notwithstanding the provisions of  
10 TMC 16B.05.100.C.2, if Franchisee fails to timely pay any undisputed Franchise  
11 application/administrative fees or other fees owed hereunder or under Title 16B,  
12 before the City can initiate any termination or forfeiture of rights, Franchisee shall  
13 be provided with 30 days' prior written notice and an opportunity to cure the failure  
14 to pay. However, Franchisee shall have the right to receive 30 days' prior notice of  
15 an intent to declare a Franchise forfeited, and shall have the opportunity to show  
16 cause why the Franchise should not be forfeited.  
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18  
19 (3) Notwithstanding the foregoing and only to the extent  
20 permitted by applicable law, the Franchise will automatically terminate by force of  
21 law 120 calendar days after an assignment for the benefit of creditors or the  
22 appointment of a receiver or trustee to take over the business of Franchisee,  
23 whether in a receivership, reorganization, bankruptcy, assignment for the benefit of  
24 creditors, or other action or proceeding. However, the Franchise may be  
25 reinstated within that 120-day period if: (a) such assignment, receivership, or  
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1 trusteehip has been vacated; or (b) such assignee, receiver, or trustee has fully  
2 complied with the terms and conditions of Title 16B and this Franchise and has  
3 executed an agreement, approved by any court having jurisdiction, assuming and  
4 agreeing to be bound by the terms and conditions of Title 16B and this Franchise.

5 However, in the event of foreclosure or other judicial sale of any of the facilities,  
6 equipment, or property of a Franchisee, the City may revoke this Franchise,  
7 following a public hearing before the City Council, by serving notice upon  
8 Franchisee and the successful bidder at the sale, in which event Franchise and all  
9 rights and privileges of this Franchise will be revoked and will terminate  
10 30 calendar days after serving such notice, unless: (a) the City has approved the  
11 Transfer of the Franchise to the successful bidder in writing; and (b) the successful  
12 bidder has covenanted and agreed in writing with the City to assume and be bound  
13 by the terms and conditions of this Franchise and Title 16B.

14  
15 2.6 Continuity of Service and Right to Purchase the System.

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17 A. In the event the City has declared a forfeiture for cause or  
18 otherwise validly revoked this Franchise as provided herein, or in the event of  
19 expiration of the initial term of this Franchise without this Franchise being renewed  
20 or extended as provided in Section 2.2 (referred to below collectively as a  
21 "termination"), Franchisee shall remove its Facilities from the Public Rights-of-Way  
22 under Section 2.7, unless the City elects to purchase or condemn the Facilities as  
23 provided in Sections 2.6.B or 2.6.D.

24  
25 Notwithstanding the forgoing or anything to the contrary contained in  
26 the TMC or City Charter, Franchisee shall have the right at any time prior to and





1 within 60 days after the effective termination, expiration, revocation, or forfeiture  
2 date of this Franchise to request the City's consent to abandon all or any part of its  
3 Facilities. In such event, Franchisee shall not be required to remove such  
4 Facilities to the extent of the City's consents in writing to such abandonment.

5 B. In the event the City has declared a forfeiture for cause or  
6 otherwise validly revoked this Franchise as provided herein, or in the event of  
7 expiration of the initial term of this Franchise without this Franchise being renewed  
8 or extended as provided in Section 2.2 (referred to below collectively as a  
9 "termination"), the City shall have an option upon termination of the Franchise to  
10 purchase that portion of the Telecommunications System located in the  
11 Right-of-Way owned by Franchisee, whether termination is, or is not, for cause.  
12 This option requires Franchisee to convey the Telecommunications System or  
13 such portion thereof as the City may choose to purchase, provided, that nothing  
14 herein shall require the City to accept or pay for any contract that it does not wish  
15 to assume. Franchisee is not required to convey portions of the  
16 Telecommunications System not located in the Right-of-Way, located outside the  
17 City, or that is leased or used (but not owned) by Franchisee from a third party  
18 pursuant to a tariff or contract. The foregoing option also requires Franchisee to  
19 sell the Telecommunications System owned by Franchisee and located in the  
20 Right-of-Way or such portion thereof as the City may choose to purchase at a fair  
21 market price, if the Franchise is terminated for cause. If Franchisee's request for a  
22 Franchise renewal is denied, the option requires Franchisee to sell the  
23 Franchise renewal is denied, the option requires Franchisee to sell the  
24 Franchise renewal is denied, the option requires Franchisee to sell the  
25 Franchise renewal is denied, the option requires Franchisee to sell the  
26 Franchise renewal is denied, the option requires Franchisee to sell the  
Telecommunications System owned by Franchisee and located in the



1 Right-of-Way or such portion thereof as the City may choose to purchase at fair  
2 market value, determined on the basis of the value of the Telecommunications  
3 System as a going concern (taking into account such property used and useful in  
4 providing service within the City that is not to be conveyed) and with no value  
5 allocated to the Franchise itself.

6 C. The City may exercise its Section 2.6.B option rights in the  
7 following manner: the City will first give Franchisee written notice of its intent to  
8 purchase the Telecommunications System or a portion of the Telecommunications  
9 System, and request an inventory of the System or portion specified in the City of  
10 Tacoma. Thereafter, Franchisee shall 60 days to produce the requested inventory  
11 and the City shall have up to 180 days after receiving the inventory to notify  
12 Franchisee that it intends to continue with the exercise of its right to purchase the  
13 Telecommunications System or a portion of the Telecommunications System.  
14 Within 90 days of the date the City notifies Franchisee of its intent to exercise the  
15 option, or by such other time as the parties may separately agree, the parties shall  
16 meet to establish a price that comports with the requirements of Section 2.6.B.  
17 If the parties are unable to agree to a price within 180 days after the City notifies  
18 Franchisee that the City intends to exercise its purchase option, either party may  
19 require the price to be set by appraisal by sending the other party notice that it  
20 wishes to have the price set by appraisal. Within 45 days of the date that notice is  
21 submitted, each party may appoint one appraiser. If each party appoints an  
22 appraiser, the two appraisers shall appoint a third appraiser; if only a single  
23 appraiser is appointed (whether by mutual agreement or because of the failure of a  
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party to timely nominate an appraiser), that appraiser shall be the sole appraiser.

1 The appraiser or appraisers shall establish a price for the System or portion thereof  
2 that the City desires to purchase in accordance with Section 2.6.B. This appraisal  
3 determination shall be final and non-appealable. The City shall have 120 days  
4 after the decision of the appraisers to notify Franchisee that it wishes to conclude  
5 the transaction; if it does not so notify Franchisee, the option shall be deemed  
6 terminated.  
7

8 If the City gives the notice required by the preceding paragraph, the  
9 parties will thereafter promptly sign all necessary documents required to close the  
10 transaction; provided, however, that the City may make conclusion of the  
11 transaction conditional upon any necessary voter approval of any bond funding for  
12 acquisition of all or a part of the System and, if applicable, the successful sale of  
13 the bonds.  
14

15 The City and Franchisee will share equally the costs associated with  
16 any appraiser that is jointly appointed (by them or by the appraisers each selects);  
17 the City will bear costs associated with any appraiser that it separately appoints  
18 and Franchisee will bear costs associated with any appraiser that it separately  
19 appoints.  
20

21 D. (1) Nothing in this section or in any other section of this  
22 Franchise shall prevent the City's exercise of its rights under the Tacoma City  
23 Charter. Included within the rights granted under Tacoma's Charter is the right to  
24 purchase or condemn Franchisee's property within the Franchised Area at any  
25 time, which right is expressly set out in Section 8.1(c) of the Charter as follows:  
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(c) To acquire by purchase or condemnation, for the use of the City itself or its inhabitants, all of the property of the grantee within the public streets, alleys, or places at a fair and just value, which shall not include any valuation of the franchise, right, or privilege, which shall thereupon terminate.

(2) Likewise, nothing in this section or in any other section of this Franchise shall be read to limit the City's right to acquire the Telecommunications System through exercise of any right of eminent domain under state law.

(3) Nothing in this section shall be read to limit the City's right to acquire the Telecommunications System as a result of abandonment.

E. In the event the City purchases, acquires, takes over, or holds all or parts of the System, as provided for in this Section 2.6, the City shall have the right, without limitation, to assign, sell, lease, or otherwise transfer its interest in all or parts of such System to any other Person or entity, including any other franchisee of a Telecommunications System, on whatever terms the City deems appropriate.

2.7 Right to Require Removal of Property/Right to Remove Property.

A. Upon termination of this Franchise, Franchisee shall remove its property from any Public Rights-of-Way and restore such Rights-of-Way to the condition required by the TMC and City Right-of-Way Restoration Policy, subject to any rights Franchisee may have to abandon its property in place, as set out in Section 2.6.A hereinabove, and any rights the City has to purchase or condemn Franchisee's property, as set out in Sections 2.6.B, Section 2.6.D and Title 16B. If Franchisee fails to remove property that the City requires it to remove after notice



1 and an opportunity to cure, the City may perform the work and collect the actual  
2 cost thereof from Franchisee. The actual cost thereof, including direct and indirect  
3 administrative costs, shall be a lien upon all plant and property of Franchisee  
4 effective upon filing of the lien with the Pierce County Auditor. In the event that  
5 Franchisee is permitted to abandon its Facilities in place, or if the City purchases  
6 or condemns Franchisee's Facilities, the City acknowledges that any ownership it  
7 takes in the Facilities thereafter is taken on an AS-IS, WHERE-IS basis.

8 B. To the extent any portion of Franchisee's System in the Public  
9 Rights-of-Way or on any other public property of the City is not removed by the  
10 Operator within either 12 months of the end of the Franchise term or 24 months  
11 from receipt of the City's order to so remove, whichever is later, the property will be  
12 deemed abandoned in its AS-IS, WHERE-IS condition and shall become the  
13 property of the City if the City wishes to own it.

14 C. Any order by the City issued pursuant to Section 2.7.A to remove  
15 Facilities shall be sent by registered or certified mail, postage prepaid, return  
16 receipt requested, to Franchisee not later than 24 months following the date of  
17 Franchise termination. Removal shall be completed (except with respect to  
18 property that Franchisee is permitted to abandon in place) not later than 12 months  
19 following the date of notification to remove the Facilities.

20 D. Franchisee shall file a written removal plan with the City not later  
21 than 30 calendar days following the date of the receipt of any orders directing  
22 removal or any consent to removal, describing the work that will be performed, the  
23 manner in which it will be performed, and a schedule for removal by location. The  
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1 removal plan shall be subject to approval and regulation by the City, including,  
2 without limitation, the City's Right-of-Way Restoration Policy. The affected  
3 property must be restored in compliance with City's Right-of-Way Restoration  
4 Policy; and any damage caused by Franchisee's removal must be  
5 addressed/compensated to the reasonable satisfaction of the City.

6 E. The purchase option provided for in Section 2.6 does not affect  
7 the City's authority to require Franchisee to remove any portion of its  
8 Telecommunications System that the City will not purchase upon Franchise  
9 termination, as provided in this section and Title 16B, nor does it affect the City's  
10 right to assume ownership of any portion of the Telecommunications System that  
11 is abandoned. Within 60 days of a request by the City, Franchisee shall execute  
12 such documents as may be required to convey such abandoned property to the  
13 City free and clear of all encumbrances.

14  
15 2.8 Intentionally Omitted.

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17 2.9 Responsibility for Costs. Except as expressly provided otherwise, any  
18 act that Franchisee is required to perform under this Franchise shall be performed  
19 at its cost. If Franchisee fails to perform work that it is required to perform within  
20 the time provided for performance, the City, after first providing notice and an  
21 opportunity to cure as herein provided, may perform the work and bill Franchisee  
22 the actual cost thereof. Franchisee shall pay the amounts billed within 30 days of  
23 receipt of an itemized bill. The parties agree that any amounts paid pursuant to  
24 this section or Title 16B are not franchise fees.  
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2.10 Work of Contractors and Subcontractors. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and Title 16B, and other applicable laws, including, without limitation, the City's Right-of-Way Restoration Policy. Franchisee and its contractors and subcontractors shall be jointly and severally liable for all damages and correcting all damages they cause. It is Franchisee's responsibility to ensure that contractors, subcontractors, or other Person(s) performing work on Franchisee's behalf are familiar with the requirements of this Franchise, Title 16B, the City's Right-of-Way Restoration Policy, and other applicable laws governing the work performed by them.

2.11 Survival of Terms. Upon the termination or forfeiture of the Franchise, Franchisee shall no longer have the right to occupy the Public Rights-of-Way for the purpose of providing Telecommunications Service. However, Franchisee's obligations to the City survive the expiration of these rights according to their terms. By way of illustration and not limitation, Sections 2.6, 2.7, 2.9, 2.10, and 4 of this Franchise shall continue in effect as to Franchisee notwithstanding any expiration, forfeiture, or revocation of the Franchise, except to the extent that a City-approved transfer, sale, abandonment or assignment of the Telecommunications System is completed in accordance with the terms of this



Franchise, and another entity has assumed full and complete responsibility for the  
1 Telecommunications System or for the relevant acts or omissions.

2 Section 3. Operation in Streets and Rights-of-Way.

3 3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms of  
4 this Franchise and TMC Titles 16B and 13, the City's Right-of-Way Restoration  
5 Policy, and other applicable Laws (as defined in Section 4.7 below), construct,  
6 operate, and maintain a Telecommunications System in Public Rights-of-Way  
7 within the Franchise Area to provide Telecommunications Services. Under this  
8 Franchise, Franchisee may also construct Telecommunications Systems on  
9 Overhead Facilities, but may only do so after obtaining required permit(s) and an  
10 additional site-specific or master siting agreement from the owners of such  
11 Overhead Facilities. Without limiting the foregoing, Franchisee expressly agrees  
12 that it will construct, operate, and maintain its System in compliance with the  
13 requirements of TMC Titles 16B and 13 (zoning and land use regulation  
14 ordinances), including those governing the placement of its Telecommunications  
15 System, and with other applicable City codes; and will obtain and maintain all  
16 bonds and billable work orders required by the same.  
17

18 3.2 Construction, Operation, or Maintenance. Franchisee shall, in all  
19 cases, comply with all lawful City ordinances and regulations now in effect or  
20 hereinafter enacted regarding the acquisition of permits and such other items as  
21 may be required by the City in connection with the construction, operation, or  
22 maintenance of the Telecommunications System, including, without limitation, the  
23 City's Right-of-Way Restoration Policy.  
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1 Without limiting the foregoing, Franchisee agrees that it shall, in the course  
2 of constructing, operating, and maintaining its Telecommunications System,  
3 comply with the requirements of Titles 16B and 13, and among other things:

4 A. (1) Franchisee shall, by a time specified by the City, protect,  
5 support, adjust, temporarily disconnect, relocate, or remove any of its property  
6 when required by the City by reason of traffic conditions; public safety; Public  
7 Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or  
8 widening); change of Public Rights-of-Way grade; construction, installation, or  
9 repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other  
10 type of government-owned Communications System, public work, public project,  
11 public facility, or improvement or any government-owned utility; Public Rights-of-  
12 Way vacation; or for any other purpose where the work involved would be aided by  
13 the removal or temporary disconnection or relocation of the Telecommunications  
14 System. Collectively, such matters are referred to below as the "public work."  
15 Notwithstanding the forgoing, in the event Franchisee is required to relocate any of  
16 its Facilities as provided for herein, the City shall provide Franchisee no less than  
17 90 days' prior written notice thereof.

18 (2) In the event of an emergency, or where the  
19 Telecommunications System creates or is contributing to an imminent danger to  
20 health, safety, or property, the City may protect, support, adjust, temporarily  
21 disconnect, remove, or relocate any or all parts of the Telecommunications System  
22 without prior notice and charge Franchisee for the actual costs incurred; provided  
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1 that the City shall give Franchisee notice thereof as soon as reasonably possible  
2 under the circumstances.

3 (3) In the case of non-public work, if any Person authorized to  
4 place Facilities in the Rights-of-Way requests Franchisee to protect, support,  
5 adjust, temporarily disconnect, remove, or relocate Franchisee's facilities to  
6 accommodate the construction, operation, or maintenance of the facilities of such  
7 other Person, Franchisee shall, after 90 days' advance written notice, take action  
8 to effect the necessary changes requested. In the case of non-public work or non-  
9 public projects, unless, and to the extent, the matter is governed by a valid contract  
10 between Franchisee and such Person requesting Franchisee to take action under  
11 this Subsection (3) or governed by a valid state or federal law or regulation, or  
12 unless Franchisee's Telecommunications System was not properly installed, the  
13 reasonable cost of the same shall be borne by the Person requesting the  
14 protection, support, adjustment, temporary disconnection, removal, or relocation  
15 and at no charge to the City, even if the City makes the request for such action.

16 (4) Franchisee shall, on the request of any Person holding a  
17 valid permit issued by a governmental authority, temporarily raise or lower its wires  
18 to permit the moving of buildings or other objects. The expense of such temporary  
19 removal or raising or lowering of wires shall be paid by the Person requesting the  
20 same.

21 B. Franchisee's obligation to construct, operate, and maintain its  
22 Telecommunications System in compliance with all applicable laws, ordinances,  
23 departmental rules and regulations, and published or otherwise readily available  
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1 practices affecting such System includes, by way of example and not limitation, the  
2 obligation to construct, operate, and maintain in accordance with zoning codes,  
3 safety codes and City construction standards, including the most current version of  
4 the *Standard Specifications for Road, Bridge and Municipal Construction*, as  
5 prepared by the Washington State Department of Transportation (“WSDOT”) and  
6 the Washington State Chapter of American Public Works Association (“APWA”);  
7 the most current version of the APWA Amendments to Division One, and the most  
8 current version of the City of Tacoma Amendments thereto. In addition, the  
9 construction, operation, and maintenance shall be performed in a manner  
10 consistent with industry standards. Franchisee shall exercise reasonable care in  
11 the performance of all its activities and shall use commonly accepted methods and  
12 devices for preventing failures and accidents that are likely to cause damage,  
13 injury, or nuisance to the public or to property. In the event that Franchisee’s work  
14 or other use of the Public Right-of-Way causes damage to any City facility,  
15 Franchisee shall bear the cost of repairing, or replacing as necessary, such City  
16 facility.  
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19 C. Franchisee's construction, operation, or maintenance of its  
20 Telecommunications System shall not commence until all required permits or  
21 agreements have been properly filed for and obtained from the proper City officials  
22 and all required permits and agreements obtained and associated fees paid. In  
23 any permit so issued, the City may impose, as a condition of the granting of the  
24 permit, such conditions and regulations as may be necessary to the management  
25 of the Public Rights-of-Way, including, by way of example and not limitation, for the  
26



1 purpose of protecting any structures in the Public Rights-of-Way, maintaining  
2 proper distance from other utilities, for the proper restoration of such Public  
3 Rights-of-Way and structures, and for the protection of the City and the public and  
4 the continuity of pedestrian and vehicular traffic.

5 D. Franchisee must follow City-established requirements for  
6 placement of Facilities in Public Rights-of-Way, including the specific location of all  
7 Facilities, which includes, without limitation, Personal Wireless Facilities, in the  
8 Public Rights-of-Way, and must in any event install Facilities in a manner that  
9 minimizes interference with the use of the Public Rights-of-Way by others,  
10 including others that may be installing Communications Facilities.  
11

12 The City may require that Facilities be installed at a particular time, at  
13 a specific place, or in a particular manner as a condition of access to a particular  
14 Public Right-of-Way area; may deny access if Franchisee is not willing to comply  
15 with the City's requirements; and may remove, or require removal of, any Facility  
16 that is not installed in compliance with the requirements established by the City, or  
17 which is installed without prior City approval of the time, place, or manner of  
18 installation, and charge Franchisee for all the costs associated with removal; and  
19 may require Franchisee to cooperate with others to minimize adverse impacts on  
20 the Public Rights-of-Way through joint trenching and other arrangements  
21 consistent with requirements the City imposes on other similarly situated  
22 franchisees or users of the Public Rights-of-Way.  
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25 E. Franchisee agrees that, as a condition of a permit for installation  
26 of conduit, the City may require it to install conduit in excess of its reasonably



1 foreseeable requirements for the purpose of accommodating the City where the  
2 City Manager determines it is appropriate to do so to minimize disruption of public  
3 passage or infrastructure, to forestall or relieve exhaustion of Right-of-Way  
4 capacity, or to protect environmentally sensitive areas; provided that the City will  
5 be responsible for the additional costs, including material and labor, associated  
6 with installing such excess conduit if installed for City use; and provided further that  
7 the City's use of any such excess conduit is limited to non-commercial,  
8 governmental uses.

9  
10 F. To the extent possible and technically and operationally feasible,  
11 Franchisee shall use conduit existing at the time of permitting in installing its  
12 System.

13 G. Subject to Subsection G.3. below, and recognizing that  
14 Franchisee's antennas and associated cables are intended to be located above-  
15 ground in order to provide Franchisee's telecommunication services to its  
16 customers, Franchisee shall be subject to the requirement that whenever all  
17 existing utilities are located underground in an area in the City, Franchisee, at its  
18 own cost, must also locate its Telecommunication System underground, including  
19 Telecommunication System Facilities, such as drops, which cross private property.

20  
21 1. Whenever the owners of Overhead Facilities locate or  
22 relocate underground within an area of the City, Franchisee shall concurrently  
23 relocate its Facilities underground at its own cost.

24  
25 2. Whenever an electric utility opens a trench adjacent to  
26 Franchisee's Facilities for the purpose of installing or relocating utility Facilities



underground, Franchisee shall concurrently relocate its utility Facilities

1 underground, and if it uses the same trench, Franchisee shall be responsible for its  
2 pro-rated share of the cost thereof.

3  
4 3. The City Manager may, for good cause shown, exempt a  
5 particular portion of the Telecommunication System from the obligation to locate or  
6 relocate Facilities underground where relocation is impractical (e.g. in the case of  
7 antennas that only function above-ground and their related equipment), or where  
8 the interest in protecting against visual blight can be protected in another manner.  
9 Nothing in this Section 3.2.G prevents the City from ordering Franchisee to locate  
10 or relocate its Telecommunication System underground in areas where other  
11 existing utilities are ordered to locate or relocate their facilities underground under  
12 other provisions of the TMC, it being the intent that the number and extent of  
13 Overhead Facilities and the visual pollution resulting therefrom will, over time, be  
14 reduced and eventually, to the extent feasible, be eliminated.  
15

16  
17 H. Franchisee shall participate in conversion to underground Local  
18 Improvement Districts ("LIDs") at the same time as other utilities are required to  
19 participate in conversion to underground LIDs. Franchisee, at no cost to the City  
20 or abutting property owners, shall share fairly with other utilities the cost of  
21 undergrounding when done through the LID process. As part of its obligations  
22 under the TMC, Franchisee shall provide the preliminary cost estimate, facility  
23 conversion designs, and final cost estimates to any LID project coordinator in a  
24 timely manner. At the request of an LID project coordinator, Franchisee shall  
25 perform underground construction in coordination with the undergrounding  
26



services provided by other LID utilities at no cost to the City or abutting property  
1 owners.

2 I. Franchisee shall promptly repair any and all Public Rights-of-Way,  
3 public property, or private property that is disturbed or damaged during the  
4 construction, operation, or maintenance of its Telecommunications System. Public  
5 property and Public Rights-of-Way must be restored in conformance with the City's  
6 Right-of-Way Restoration Policy.  
7

8 J. No tree trimming shall be performed without the permission of the  
9 City and other affected authorities, and any tree trimming must be performed in  
10 strict accordance with the TMC. Even if tree trimming is authorized by the City,  
11 Franchisee is liable for any damage it causes during the course of tree trimming.  
12

13 K. In any dispute over the adequacy of a restoration relative to this  
14 section, the Tacoma Department of Public Works Director shall, in the Director's  
15 sole discretion, make the final determination.  
16

17 L. Franchisee shall not remove any Facilities except as hereinafter  
18 provided.

19 (1) Franchisee shall not remove any Facilities which require  
20 trenching or other opening of the Rights-of-Way along the extension of the  
21 Facilities to be removed without the express permission of the City, which  
22 permission shall not be unreasonably withheld, conditioned, or delayed.  
23 Franchisee must request permission from the City to remove the Facilities at least  
24 30 days in advance of the date Franchisee proposes to begin removal.  
25  
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1 (2) Franchisee shall remove such Facilities as the City orders  
2 it to remove; provided, that the City may not order removal where such removal is  
3 primarily to give economic benefit or advantage to a competing provider of  
4 Telecommunications Service.

5 (3) Where trenching or other opening of the Rights-of-Way  
6 along the extension of Facilities to be removed is required, Franchisee must post  
7 bonds as the City may require ensuring that the property is promptly removed with  
8 minimum disruption. Franchisee must restore the affected property in  
9 conformance with the City's Right-of-Way Restoration Policy; and Franchisee must  
10 compensate those whose property it damages for the damage.  
11

12 (4) Subject to the City's rights to purchase the  
13 Telecommunications System under Section 2, Franchisee may voluntarily remove  
14 any of its Facilities from the Public Rights-of-Way which have been installed in  
15 such a manner that they can be removed without trenching or other opening of the  
16 Rights-of-Way.  
17

18 3.3 Right To Inspect and Order Corrections. The City may inspect the  
19 Telecommunications System at any time reasonable under the circumstances to  
20 ensure compliance with this Franchise and applicable law, including to ensure that  
21 Franchisee's Telecommunications System is constructed and maintained in a safe  
22 condition. If Franchisee's representatives are not on-site performing work on the  
23 Telecommunications System, whenever feasible, the City shall give reasonable  
24 advance notice of its intent to inspect so that Franchisee may have a  
25 representative present during the inspection. If an unsafe condition is found to  
26





1 exist, the City, in addition to taking any other action permitted under applicable law,  
2 may order Franchisee, in writing, to make the necessary repairs and alterations  
3 specified therein forthwith to correct the unsafe condition on a time table  
4 established by the City which is reasonable in light of the unsafe condition. The  
5 City has the right to correct, inspect, administer, and repair the unsafe condition if  
6 Franchisee fails to do so in a timely manner, and to charge Franchisee therefor.

7 3.4 Information Regarding Ongoing Work. In addition to providing notice to  
8 the public of ongoing work as may be required under applicable law, Franchisee  
9 shall make available information regarding any ongoing construction, operation, or  
10 installation of its Telecommunications System sufficient to show (1) the nature of  
11 the work being performed; (2) where it is performed; (3) its estimated completion  
12 date; and (4) progress to completion.

14 Section 4. Regulatory Provisions.

15 4.1 Intent. The City shall have the right to administer and regulate activities  
16 of this Franchise up to the fullest extent of the law. The failure to reserve a  
17 particular right to regulate or reference a particular regulation shall not be  
18 interpreted by negative implication or otherwise to prevent the application of a  
19 regulation to Franchisee.  
20

21 4.2 Remedies for Franchise Violations. The City has the right to exercise  
22 any and all of the following remedies, singularly or in combination, in the event  
23 Franchisee violates any provision of this Franchise:  
24

25 A. Draw upon the performance bond or other security provided  
26 under this Franchise; provided, however, such drawing shall be only in such a



1 manner and in such amount as the City reasonably determines is necessary to  
2 remedy the default. Should the City take this action, Franchisee shall be  
3 responsible for all direct and actual costs related to such action, including, but not  
4 limited to, actual legal and administrative costs:

- 5 B. Commencing an action at law for monetary damages;
- 6 C. Commencing an action for equitable or other relief;
- 7 D. Declaring the Franchise to be revoked; and/or
- 8 E. Seeking specific performance of any provision which reasonably  
9 lends itself to such remedy.

10  
11 In determining which remedy or remedies for Franchisee's violation are  
12 appropriate, the City may take into consideration the nature and extent of the  
13 violation, the remedy needed to prevent such violations in the future, whether  
14 Franchisee has a history of previous violations of the same or similar kind, and  
15 such other considerations as are appropriate under the circumstances. Remedies  
16 are cumulative; the exercise of one shall not foreclose the exercise of others.

17  
18 4.3 Procedure for Remedying Franchise Violations. Before imposing  
19 liquidated damages or drawing upon the performance bond or any other security  
20 set out in Section 6, the City shall follow the procedure below.

21  
22 A. Notice of Violation. In the event that the City believes that  
23 Franchisee has not complied with the terms of this Franchise, the City shall notify  
24 Franchisee in writing, in compliance with Section 7.5, of the nature of the alleged  
25 noncompliance.

26



1 B. Franchisee's Right to Cure or Respond. Except as provided in  
2 Section 4.3.D, Franchisee shall have 30 days from the receipt of the notice  
3 described above to (a) respond to the City contesting the assertion of  
4 noncompliance, or (b) to cure such default or, in the event that by the nature of the  
5 default such default cannot be cured within the 30-day period, initiate steps to  
6 remedy such default as promptly as possible and complete the cure within a  
7 reasonable time. The duty to cure includes the duty to cure all harms caused by  
8 the acts or omissions of Franchisee which gave rise to the alleged non-  
9 compliance. At the end of the 30-day period, Franchisee shall notify the City, in  
10 writing, of the steps it has taken to cure the default, if any; if the cure is not  
11 complete, the reason it is not complete and the projected date for completion; and  
12 if the default is disputed, the complete basis for that contention.  
13

14 C. Public Hearing. The City may schedule a public hearing to  
15 investigate any alleged default. The City shall give Franchisee 20 calendar days'  
16 notice of the time and place of the hearing and provide Franchisee with an  
17 opportunity to be heard.  
18

19 D. Action After Hearing. If the City determines after such hearing  
20 that Franchisee did not timely cure or initiate steps to cure the default in a timely  
21 manner satisfactory to the City after the notice required by Section 4.3.A was  
22 provided, then the City may draw upon any performance bond, security fund, or  
23 other security, including requiring performance under the guarantee; and impose  
24 liquidated damages. However, notice and opportunity to cure are not required for  
25 three (3) or more repeat violations of the same material provision of this Franchise  
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1 within a calendar year, or for fraud, which shall be deemed incurable; in such  
2 cases, the performance bond, letter of credit, or other security may be drawn upon,  
3 and the guarantor required to perform, and liquidated damages imposed after the  
4 hearing required by Section 4.3.C.

5 E. Liquidated Damage Amounts. Because any material failure to  
6 comply with the provisions of this Franchise by Franchisee will result in injury to the  
7 City, and because it may be difficult to estimate the extent of each such injury,  
8 Franchisee and the City agree to the following liquidated damages, which  
9 provisions represent the best estimate of the damages resulting from injuries of  
10 specific types. The amounts of the liquidated damages set forth in this Franchise  
11 are in 2017 dollars and shall be increased each year by the increase in the U. S.  
12 Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Pacific  
13 Cities and U. S. City Average for the greater Seattle area. The amount of  
14 liquidated damages for all material violations of this Franchise for which actual  
15 damages may not be ascertainable shall be: \$500 per day for each violation for  
16 each day the violation continues. It is provided, however, that the City shall allow  
17 Franchisee a minimum of 30 days after written notice to Franchisee of such  
18 neglect, failure, or refusal to comply within which to meet compliance or correct  
19 performance, prior to the assessment of any liquidated damages.  
20  
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23 4.4 Failure to Enforce. Franchisee shall not be relieved of any of its  
24 obligations to comply promptly with any provision of this Franchise by reason of  
25 any failure of the City to enforce prompt compliance, and the City's failure to  
26



1 enforce shall not constitute a waiver of rights or acquiescence in Franchisee's  
2 conduct.

3 4.5 Force Majeure. Franchisee shall not be deemed in default with  
4 provisions of this Franchise where performance was rendered impossible by war or  
5 riots, civil disturbances, floods, or other natural catastrophes beyond Franchisee's  
6 control; the unforeseeable unavailability of labor or materials; or power outages  
7 exceeding back-up power supplies. The acts or omissions of affiliates shall not be  
8 deemed to be beyond Franchisee's control, and the knowledge of affiliates shall be  
9 imputed to Franchisee. This Franchise shall not be revoked or Franchisee  
10 penalized for such noncompliance, provided that Franchisee takes immediate and  
11 diligent steps to bring itself back into compliance and to comply as soon as  
12 possible under the circumstances with this Franchise without unduly endangering  
13 the health, safety, and integrity of Franchisee's employees or property, or the  
14 health, safety, and integrity of the public, Public Rights-of-Way, public property, or  
15 private property.  
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18 4.6 Alternative Remedies. No provision of this Franchise shall be deemed  
19 to bar the right of the City or Franchisee to seek or obtain judicial relief from a  
20 violation of any provision of this Ordinance or any rule, regulation, requirement, or  
21 directive promulgated thereunder. Neither the existence of other remedies  
22 identified in this Franchise nor the exercise thereof shall be deemed to bar or  
23 otherwise limit the right of the City or Franchisee to recover monetary damages for  
24 violations by the City or Franchisee, or to seek and obtain judicial enforcement of  
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1 Franchisee's or the City's obligations by means of specific performance, injunctive  
2 relief or mandate, or any other judicial remedy at law or in equity.

3 4.7 Compliance with Applicable Laws. Franchisee shall comply with all  
4 applicable federal and state laws and regulations, including regulations of any  
5 administrative agency thereof, as well as all applicable City ordinances,  
6 resolutions, rules, policies, and regulations heretofore or hereafter adopted or  
7 established during the entire term of the Franchise (collectively, "Laws"); provided  
8 that, nothing herein shall prevent Franchisee from challenging a provision of Laws  
9 that applies only to it as an impairment of contract. Nothing in this Franchise shall  
10 limit the City's right of eminent domain under state law. Nothing in this Franchise  
11 shall be deemed to waive the requirements of any lawful code or resolution of the  
12 City regarding permits, fees to be paid, or manner of construction.

13  
14 Section 5. Reporting Requirements.

15 5.1 Quarterly Reports. Within 30 days after the end of each of Franchisee's  
16 fiscal quarters, Franchisee shall submit a written report to the City which shall  
17 contain a listing of all categories of Gross Receipts collected by Franchisee for its  
18 business activities as identified in Section 2.1, which are activities specifically  
19 taxable as a telephone business under TMC Title 6. Said written report shall be in  
20 sufficient detail and with sufficient explanation to enable the City to understand the  
21 report and to verify the accuracy of the report. In addition, Franchisee shall  
22 provide such other reports as may be required by Title 16B.

23  
24 5.2 Annual Report. In the event that changes in applicable laws allow the  
25 City to require a franchise fee as referenced in Section 6 below, then no later than  
26



120 days following the end of Franchisee's fiscal year each year after the  
1 imposition of franchise fees, Franchisee shall present a written report to the City  
2 which shall include:

3           A. Audited financial statements for (1) Franchisee and (2) any  
4 affiliate which is involved in any way with the operation or ownership of the  
5 System; and a financial statement for Franchisee that includes Gross Receipts  
6 from all sources, gross Subscriber revenues from each category of service, as well  
7 as an income statement and a balance sheet. In the event any audited financial  
8 report has not been published by the date due under this section, then the audited  
9 financial report shall be deemed presented on time if presented within 30 days  
10 after publication.  
11

12           All financial reports required under this section shall be presented to  
13 the City accompanied by such notes and explanations as are required to fully  
14 understand the reports. Such notes and explanations shall include, but not be  
15 limited to, an explanation of any and all deductions made from Gross Receipts for  
16 the calculation of Fees or taxes to be paid to the City, as well as:  
17

18           1. A summary of the previous year's activities for the  
19 Franchise Area, including, but not limited to, the total number of Customers, miles  
20 of Facilities, any services added or dropped, and any technological changes  
21 occurring in the system;  
22

23           2. Plans for the future; and  
24

25           3. Such other information as is required by Title 16B.  
26



1 5.3 Additional Reports. Franchisee shall prepare and furnish to the City  
2 within 60 days of written request, to the person and address specified in the City's  
3 request, in a form reasonably prescribed by the City, such reports with respect to  
4 Franchisee's operation, affairs, transactions, or property as may be reasonably  
5 necessary and appropriate to ensure compliance with the material provisions of  
6 this Franchise, or to permit the performance of any of the rights, functions, or  
7 duties of the City in connection with the Franchise.

8 5.4 Preservation of Confidential Information. Trade secrets and confidential  
9 information designated as such by Franchisee shall be subject to such protection  
10 as provided in Title 16B or under chapter 42.56 RCW, or as otherwise provided by  
11 applicable laws. Franchisee shall be responsible for clearly and conspicuously  
12 identifying the work as confidential or proprietary, and shall provide a brief written  
13 explanation regarding its position on the protected status of the information under  
14 state or federal law. In the event that the City receives a public records request  
15 under chapter 42.56 RCW or similar law for the disclosure of information  
16 Franchisee has designated as confidential, trade secret, or proprietary, the City  
17 shall promptly provide notice of such disclosure so that Franchisee can take  
18 appropriate steps to protect its interests. Nothing in this section prohibits the City  
19 from complying with chapter 42.56 RCW or any other applicable law or court order  
20 requiring the release of public records, and the City shall not be liable to  
21 Franchisee for compliance with any law or court order requiring the release of  
22 public records. The City shall comply with any injunction or court order obtained by  
23 Franchisee which prohibits the disclosure of any such confidential records.  
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Section 6. Compensation and Financial Provisions.

6.1 Fees.

A. State Prohibition of Franchise Fee. The parties understand that RCW 35.21.860 currently prohibits a municipal franchise fee for the intended use. Franchisee agrees that if this statutory prohibition is removed, the City may assess a reasonable franchise fee to be agreed to by the parties if the statutory prohibition is removed. The parties agree that this Section 6.1.A does not limit the right of Franchisee to challenge the franchise fee pursuant to 47 USC § 253.

B. Franchisee Subject to the City Telephone Business Tax.

Franchisee agrees that its activities in the City of Tacoma identified in Section 2.1 are activities specifically taxable as a telephone business under TMC Chapter 6A, and are taxable at the 6 percent rate specified in TMC Chapter 6A.40.050.D now in effect or as amended, which at the time of the execution of this Franchise agreement is 6 percent of Franchisee's Gross Receipts, but excluding any Gross Receipts from the provision of internet access service. It is agreed that the amount of Gross Receipts to be taxed will include the amount of tax imposed on Franchisee by City ordinance. This Franchise does not limit the City's power of taxation.

C. Franchisee Obligated to Pay Administrative Costs. In accord with

RCW 35.21.860 as presently effective, and as it may be later amended, Franchisee must pay the City an amount sufficient to recover administration expenses incurred in receiving and approving this Franchise, including, but not limited to, the reasonable costs of outside consultants retained by the City to assist



1 in the City's consideration and processing of this Franchise application. The first  
2 \$5,000 of said expenses will be covered by the \$5,000 application fee deposited  
3 with the City. To the extent allowed by RCW 35.21.860 or other applicable laws,  
4 Franchisee may be required to pay other costs applicable to this Franchise and  
5 Franchisee's activities hereunder. The amount of payment to be made by  
6 Franchisee to cover these administrative costs is an amount determined to be  
7 reasonable by the Franchise Services Manager. Such obligation further includes  
8 municipal fees arising out of this Franchise related to receiving and approving permits  
9 or licenses, inspecting plans and construction, or relating to the preparation of a  
10 detailed statement pursuant to chapter 43.21C RCW. Said fees must be paid within  
11 30 days of receipt of the City's billing therefor.  
12

13 D. Manner of Payment; Audit. Franchisee will pay the City Telephone  
14 Business Tax specified in Section 6.1B on a monthly basis accompanied by  
15 Franchisee's standard remittance form which specifies the net taxable charges, the  
16 local tax rate, and the local tax due, plus penalties and/or interest, if any is due.  
17 Franchisee shall make all other required fee payments in the form, at the intervals,  
18 and in the manner requested by the City Treasurer, and furnish the City Treasurer  
19 with any information related to revenue collection functions as is reasonably  
20 requested. In case of audit, the City Treasurer may require Franchisee to furnish a  
21 verified statement of compliance with Franchisee's obligations or in response to any  
22 questions. Said certificate may be required from an independent, certified public  
23 accountant at Franchisee's expense. All audits will take place on Franchisee's  
24 premises or offices furnished by Franchisee, which shall be a location within the City  
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1 of Tacoma or other mutually agreeable place; however, Franchisee must agree to  
2 pay the associated costs of travel. Franchisee agrees, within 30 days of written  
3 request of the City Treasurer, to provide, to the person and address specified in the  
4 City Treasurer's request, copies of all documents filed with any federal, state, or  
5 local regulatory agency, to be mailed to the City Treasurer on the same day as filed,  
6 postage prepaid, affecting any of Franchisee's Facilities or business operations in the  
7 City of Tacoma.

8 E. No Other Deductions. No deductions including current or  
9 previously paid fees shall be subtracted from the Gross Receipts amount, except  
10 as allowed under state or federal law, upon which payments are calculated and  
11 due for any period, nor shall copyright fees or other license fees paid by  
12 Franchisee be subtracted from Gross Receipts for purposes of calculating  
13 payments.  
14

15 F. Late Payments. Any fees owing which remain unpaid more than  
16 10 days after the dates specified herein shall be delinquent and shall thereafter  
17 accrue interest at the maximum allowable rate pursuant to RCW 19.52.020.  
18

19 G. Period of Limitations. The period for commencing an action for  
20 the recovery of any fee payable hereunder shall be six years from the date on  
21 which payment by Franchisee is due, subject to tolling as provided as a matter of  
22 law or equity. Unless within six years from and after the due date for a particular  
23 payment, the City makes written request to review Franchisee's records with  
24 respect to such fee payment (either individually or as part of a broader request)  
25 recovery shall be barred with respect to such payment and the Franchising  
26



Authority shall be estopped from asserting any claims whatsoever against  
1 Franchisee relating to any alleged deficiencies in that particular payment.

2           6.2 Auditing and Financial Records. Franchisee shall manage all of its  
3 operations in accordance with a policy of keeping books and records open and  
4 accessible to the City. Without limiting its obligations under this Franchise,  
5 Franchisee agrees that it will collect and make books and records available for  
6 inspection and non-confidential books and records for copying by the City in  
7 accordance with Title 16B. Franchisee shall be responsible for collecting the  
8 information and producing it. Books and records shall be made available for  
9 inspection to the City at the Tacoma Municipal Building or such other location as  
10 the parties may agree. Notwithstanding any provision of Title 16B or this  
11 Franchise, if documents are too voluminous or for security reasons cannot be  
12 produced at the Tacoma Municipal Building or other mutually agreeable location  
13 within the City, then Franchisee may produce the material at another central  
14 location, provided it also agrees to pay the additional reasonable costs incurred by  
15 the City in reviewing the materials, if such location is outside the City.

16           Franchisee shall take all steps reasonably required, if any, to ensure that it  
17 is able to provide the City all information which must be provided or may be  
18 requested under Title 16B or this Franchise, including by providing appropriate  
19 Subscriber privacy notices. Nothing in this section shall be read to require  
20 Franchisee to violate 47 U.S.C. §§ 222 or 551 or to disclose or make available to  
21 the City any books and records protected from disclosure under other applicable  
22 law. Franchisee shall be responsible for redacting any data that federal law  
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prevents it from providing to the City. Records shall be kept for at least six years.

1 In addition to maintaining all records as required by Title 16B, Franchisee shall  
2 maintain records sufficient to show its compliance with the requirements of this  
3 Franchise, and shall produce those records within 30 days of a City request.  
4

5 Franchisee agrees to meet with a representative of the City upon request to  
6 review its methodology of record-keeping, financial reporting, computing fee  
7 obligations, and other procedures the understanding of which the City deems  
8 necessary for understanding the meaning of reports and records.  
9

10 The City agrees to request access to only those books and records, in  
11 exercising its rights under this section, which it deems reasonably necessary as  
12 part of a bona fide exercise of its authority over the Telecommunications System  
13 under this Franchise, Title 16B or other applicable Laws. The City further agrees  
14 that it will withhold from public disclosure those books and records made available  
15 to it pursuant to this Section 6.2, but only to the extent that the City believes that it  
16 has the discretion to do so under state law. The City will, however provide notice  
17 to Franchisee of any request for such books and records so that Franchisee can  
18 engage whatever protective measures are available to it.  
19

20 6.3 Performance Bond. At the same time it provides its Franchise  
21 acceptance to the City, Franchisee shall provide a performance bond to ensure the  
22 faithful performance of its responsibilities under this Franchise and applicable law,  
23 including, by way of example and not limitation, its obligations to relocate and  
24 remove its facilities; and to restore City Rights-of-Way and other property. The  
25 initial amount of the performance bond shall be \$250,000. The amount of the bond  
26



1 may be changed from time to time to reflect changed risks to the City or to the  
2 public. Franchisee may be required to obtain additional bonds in accordance with  
3 the City's ordinary practices and/or pursuant to applicable TMC provisions. The  
4 bond shall be in a form and with a surety (authorized to do business in the state of  
5 Washington) reasonably acceptable to the City's Risk Manager and in a form  
6 reasonably acceptable to the City Attorney. Franchisee shall pay all premiums or  
7 costs associated with maintaining the bond, and shall keep the same in full force  
8 and effect at all times during the Franchise Term.

9  
10 6.4 Indemnification by Franchisee.

11 A. Franchisee, by accepting this Franchise, agrees to release the  
12 City from and against any and all liability and responsibility in or arising out of, or  
13 by reason of, or resulting from or of the negligent acts, errors, or omissions of  
14 Franchisee during the construction, operation, or maintenance of the  
15 Telecommunications System, and, without limiting the provisions of Section 7.4,  
16 agrees not to sue or seek any money or damages from the City, except to the  
17 extent Franchisee's Telecommunication System is damaged by the negligent acts  
18 or omissions or willful misconduct of the City or its agents, or the City's violation of  
19 any of the terms of this Franchise or any applicable Laws.  
20

21 B. Franchisee agrees to indemnify and hold harmless the City, its  
22 trustees, elected and appointed officers, agents, and employees, from and against  
23 any and all claims, demands, or causes of action of whatever kind or nature, and  
24 the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities,  
25 damages, orders, judgments, or decrees sustained by any third party arising out of,  
26



1 or by reason of, or resulting from or of the acts, errors, or omissions of Franchisee  
2 or its agents, independent contractors, or employees related to or in any way  
3 arising out of the construction, operation, maintenance, or relocation of the  
4 Telecommunications System; except to the extent caused by or arising out of the  
5 City's negligence or willful misconduct. Franchisee waives immunity under  
6 Title 51 RCW and affirms that the City and Franchisee have specifically negotiated  
7 this provision, as required by RCW 4.24.115, to the extent it may apply.

8 C. Franchisee agrees that the covenants and representations  
9 relating to the indemnity provided in Sections A and B above shall survive the  
10 term/expiration/termination of this Franchise and continue in full force and effect as  
11 to Franchisee's responsibility to indemnify.

12  
13 6.5 Franchisee Insurance.

14 A. Franchisee shall maintain, throughout the term of the Franchise,  
15 adequate insurance to protect the City, its trustees, elected and appointed officers,  
16 contracted agents working under the direct control of the City of Tacoma, and  
17 employees against claims and damages that may arise as a result of the  
18 construction, operation, or maintenance of the Telecommunications System. The  
19 City makes no representation as to what constitutes adequate insurance for  
20 Franchisee's operations. The foregoing notwithstanding, Franchisee must maintain  
21 at least the amounts and types of insurance required by TMC 16B.05.090.

22  
23  
24 B. The required insurance must be obtained and maintained for the  
25 entire period Franchisee has facilities in the Public Rights-of-Way, and for six years  
26 thereafter. If Franchisee, its contractors, or subcontractors do not have the



1 required insurance, the City may order such entities to stop operations until the  
2 insurance is obtained and approved.

3 C. Certificates of insurance, reflecting evidence of the required  
4 insurance and including the City as an additional named insured as its interest may  
5 appear under this Agreement with a blanket additional insured endorsement on the  
6 COMMERCIAL GENERAL LIABILITY and AUTOMOTIVE policies described in  
7 TMC 16B.05.090, shall be filed with the City's Risk Manager. The certificate shall  
8 be filed with the acceptance of the Franchise and annually thereafter, and as  
9 provided in E below.  
10

11 D. Policies shall be issued by companies authorized to do business  
12 under the laws of the state of Washington. Financial Ratings must be no less than  
13 A-VII in the latest edition of "Bests Key Rating Guide," published by A.M. Best  
14 Guide.  
15

16 E. In the event that the insurance certificate provided indicates that  
17 the insurance shall terminate or lapse during the period of the Franchise,  
18 Franchisee shall furnish, within 30 days of renewal, a renewed certificate of  
19 insurance as proof that equal and like coverage has been obtained.  
20

21 F. The City reserves the right to require any other insurance  
22 coverage it deems necessary during the term of the Franchise, depending upon  
23 the exposures.

24 G. It is Franchisee's responsibility to ensure that each subcontractor  
25 obtains and maintains adequate liability insurance coverage, and upon request of  
26 the City, Franchisee shall provide evidence of such insurance.





1 6.6 Security Fund. Franchisee shall provide the City an irrevocable (until  
2 Franchisee removes all of its Facilities from the Public Rights-of-Way or the City  
3 consents to abandonment of all such remaining Facilities) letter of credit in the  
4 amount of \$50,000.00 as additional security to secure the payment of fees owed  
5 and to secure any other performance promised to the City in this Franchise, and to  
6 pay any taxes, fees, or liens owed to the City. Any letter of credit shall be in a form  
7 and with an institution acceptable to the City's Director of Finance and in a form  
8 acceptable to the City Attorney. Should the City draw upon the letter of credit, it  
9 shall promptly notify Franchisee, and Franchisee shall promptly restore the letter of  
10 credit to the full required amount. The City may from time to time change the  
11 amount of the required security fund/letter of credit/assignment of funds to reflect  
12 changes in the risks to the City and to the public, including delinquencies in taxes  
13 or other payments to the City.  
14

15 Section 7. Miscellaneous Provisions.  
16

17 7.1 Posting and Publication. Franchisee shall assume the cost of posting  
18 and publication of this Franchise as such posting and publication is required by law  
19 and such is payable upon Franchisee's filing its acceptance of the Franchise.  
20

21 7.2 Guarantee of Performance. Franchisee acknowledges that it enters  
22 into the Franchise voluntarily in order to secure and in consideration of the grant  
23 from the City of a ten-year Franchise. Performance pursuant to the terms and  
24 conditions of this Franchise agreement is guaranteed by Franchisee.

25 7.3 Governing Law and Venue. Franchise shall be governed by and  
26 construed in accordance with the laws of the state of Washington without recourse



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to any principles of Conflicts of Laws, except that where federal law preemptively applies it shall control. Any litigation between the City and Franchisee arising under or regarding this Franchise shall occur, if in the state courts, in the Superior Court of Pierce County, and if in the federal courts, in the United States District Court for the Western District of Washington.

7.4 No Recourse. Without limiting such immunities as the City or other Persons may have under applicable law, Franchisee shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents, or employees for any loss, costs, expense, or damage arising out of any provision or requirement of Title 16B or because of the enforcement of Title 16B or the City's exercise of its authority pursuant to Title 16B, this Franchise or other applicable law, except to the extent Franchisee's Telecommunication System is damaged by the negligent acts or omissions or willful misconduct of the City or its representatives or caused by or arising from the City's violation of this Franchise or any applicable Laws.

7.5 Notice. Unless expressly otherwise agreed between the parties, every notice, billing, or response required by this Franchise to be served upon the City or Franchisee shall be in writing, and shall be deemed to have been duly given to the required recipient upon actual receipt or refusal of delivery and shall be sent by a nationally recognized overnight courier or by U.S. certified mail, return receipt requested, postage prepaid. The notices or responses to the City shall be addressed as follows:



1 City of Tacoma  
2 Municipal Services Building  
3 1224 MLK Jr Way  
4 Tacoma, WA 98405  
5 Attn: Franchise Services Manager

6 The notices or responses to Franchisee shall be addressed as follows:

7 Seattle SMSA Limited Partnership  
8 d/b/a Verizon Wireless  
9 Attn: Network Real Estate  
10 180 Washington Valley Road  
11 Bedminster, New Jersey 07921

12 With copies to:

13 Seattle SMSA Limited Partnership  
14 d/b/a Verizon Wireless  
15 Attn: Pacific Market General Counsel  
16 15505 Sand Canyon Avenue  
17 Irvine, CA 92618

18 The City and Franchisee may designate such other address from time to  
19 time by giving written notice to the other, but notice cannot be required to more  
20 than two addresses.

21 7.6 Execution. Franchisee shall execute and return to the City three  
22 original countersigned copies of this Ordinance and a signed acceptance of the  
23 Franchise granted hereunder within 30 days after the date of passage of the  
24 Ordinance by the City Council. The acceptance shall be submitted in the form  
25 attached hereto or other form acceptable to the City Attorney and in accepting the  
26 Franchise, Franchisee warrants that it has carefully read the terms and conditions  
of this Franchise and unconditionally accepts all of the terms and conditions of this  
Franchise and agrees to abide by the same and acknowledges that it has relied  
upon its own investigation of all relevant facts, that it has had the assistance of



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counsel, that it was not induced to accept a Franchise, that this Franchise represents the entire agreement between Franchisee and the City, and that Franchisee accepts all risks related to the interpretation of this Franchise. The countersigned Ordinance and acceptance shall be returned to the City accompanied by: evidence of insurance; a payment for publication costs; billable work order deposit; and the security fund deposit and performance bond.

The Franchise rights granted herein shall not become effective until all of the foregoing is received by City in acceptable form ("Effective Date"). In the event Franchisee fails to submit the countersigned Ordinance and acceptance as provided for herein, or fails to provide the required accompanying documents and payments, within the time limits set forth in this section, the grant of the Franchise shall be null and void.

Passed \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:  
  
\_\_\_\_\_  
City Clerk

Approved as to form:  
  
\_\_\_\_\_  
Deputy City Attorney



**ACCEPTANCE OF CITY FRANCHISE**

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Ordinance No. \_\_\_\_\_, effective \_\_\_\_\_, 2017.

I, \_\_\_\_\_, am the \_\_\_\_\_ of Seattle SMSA Limited Partnership, a Delaware limited partnership, and am the authorized representative to accept the above referenced City franchise ordinance on behalf of Seattle SMSA Limited Partnership.

I certify that this franchise and all terms and conditions thereof are accepted by Seattle SMSA Limited Partnership.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Seattle SMSA Limited Partnership

By \_\_\_\_\_

Its \_\_\_\_\_