



**CITY OF EDGEWOOD
REGULAR COUNCIL MEETING AGENDA**

Tues., August 22, 2017 – 7:00 pm. ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. CALL TO ORDER

Pledge of Allegiance, Roll Call, Additions/Deletions

2. AUDIENCE COMMENT

3. MAYOR'S REPORT

4. CONSENT AGENDA (pg. 2): *The consent agenda includes items that are routine in nature and are adopted by one motion. Should Council wish to discuss a consent agenda item, the item would be removed from the consent agenda and discussed under Council Business.*

The following items are presented for Council approval:

A. Regular City Council Meeting Minutes of August 8, 2017,

B. Study Session and Special Council Meeting Minutes of August 15, 2017.

C. **AB17-033**, a motion approving August 2017 Budgeted Expenditures as follows: IRS 941 ACHs; Deferred Compensations Program; Dept. of Retirement Systems and Payroll Direct Deposit in the amount of \$47,429.41; and Vendor Check Numbers 22873-22903 with EFT Payments in the amount of \$152,010.66. Total distributions submitted for review & authorization in the amount of \$199,440.07

D. **AB17-0382 (pg. 22)**, a motion adopting Resolution No. 17-0382, authorizing the Mayor to declare miscellaneous obsolete equipment, computers, and electronics as surplus, and administer the donation nor sale of the items

5. COUNCIL BUSINESS

A. **AB17-0505 (pg. 25)**, a motion to accept the second reading and adoption of Ordinance No. 17-0505, granting a nonexclusive franchise to Seattle SMSA Limited Partnership, D/B/A Verizon Wireless, to construct and operate a telecommunications system within certain public rights-of-way; providing for severability, and establishing an effective date

B. **AB17-0507 (pg. 81)**, a motion adopting Ordinance No. 17-0507, adopting Findings of Fact to support the maintenance of the six-month moratorium imposed by the City on July 11, 2017, under Ordinance No. 17-0504 on the acceptance of applications for Planned Residential Developments (PRD's) under EMC 18.50.095, said moratorium adopted for the purpose of allowing the city to evaluate the existing regulations for consistency with law and the city's Comprehensive Plan, and such moratorium to be in effect while the city performs the necessary infrastructure analysis, legal review and follows the processes for any needed code amendments, all as required by RCW 36.70a.390

C. **AB17-0383 (pg. 86)**, a motion adopting Resolution No. 17-0383, authorizing the first amendment to the Professional Services Agreement with BHC Consultants, LLC for Professional On-Call Planning Services

6. COUNCIL COMMENTS

7. EXECUTIVE SESSION

8. ADJOURN

This meeting is accessible to persons with disabilities. For individuals who may require special accommodations, please contact City Hall at (253) 952.3299, 24 hours in advance.



**CITY OF EDGEWOOD
REGULAR COUNCIL MEETING SUMMARY**

Tues., August 8, 2017 – 7:00 p.m. “ City Hall – 2224 104th Avenue East “ Edgewood, WA

1. CALL TO ORDER

Mayor Eidinger called the meeting to order at 7:00pm. Councilmember Meyers led the attendees in the Pledge of Allegiance.

ROLL CALL

Present: Mayor Daryl Eidinger (Not voting), Councilmember Donna O'Ravez, Councilmember Mark Creley, Councilmember Luke Meyers, Deputy Mayor Tyron Christopherson, Councilmember Stephanie Shook, Councilmember Rosanne Tomy, Councilmember Nate Lowry.

Staff Present: Assistant City Administrator Dave Gray, Assistant City Administrator Aaron Nix, City Clerk Rachel Pitzel, Police Chief Micah Lundborg, Carol Morris, City Attorney.

Additions/Deletions to the Agenda

There were no additions or deletions to the agenda.

2. AUDIENCE COMMENT

Christine Faucher- discussed speeding on 122nd; she noted how dangerous it has become. She hoped Council is working on that this issue and asked about speed patrols, and when police are out there.

Chief Lundborg addressed the comment, and noted that they are out there patrolling that area frequently.

Assistant City Administrator Nix noted a study has been completed and looking staff is looking into something like a round a bout at 24th and maybe at 32nd to try to slow folks down. He also noted that the Mayor and Chief Lundborg are working on getting school zone safety cameras.

3. PUBLIC HEARING

Ordinance No. 17-0504, adopting an immediate, six-month moratorium on the acceptance of applications for Planned Residential Developments (PRD'S) under EMC 18.50.095

Mayor Eidinger read the rules for the hearing.

Mayor Eidinger opened the public hearing at 7:06pm.

Assistant City Administrator Nix gave an update on the moratorium for planned Residential Developments (PRDs) applications.

Mayor Eidinger asked for public comments.

Linda Howard - discussed development codes last time with Council, encouraged the moratorium and noted her letter she sent to Council regarding the codes and the developments that are occurring.

Mark Kibler - stated he was under the understanding the City is trying to keep this a rural community by developing Meridian instead of the outer limits. He noted he was very disappointed in how the city is growing and was hoping for more beautification, there were no foresight and not an attractive city right now; he stated the city needed to put more thought into it.

Gabriel Bowman- Master Builders Assoc. - spoke briefly on what Pierce County was facing as a whole, he noted- last year ,80,000 folks have moved to Pierce County for their jobs- he agreed there needs to be smart growth, but noted the importance of having the ability for residential growth.

City Attorney Morris discussed the procedure, noted at the last council meeting, Council did impose the moratorium, and the Public Hearing that evening is determining whether you want the moratorium to continue. She noted that if Council vote in favor, staff would draft Findings of Facts, and Conclusions and present to council in resolution from at the next meeting.

Assistant City Administrator Nix relayed that he appreciated everyone's comments.

Carol Hubbard- spoke regarding a letter she wrote about the development in Edgewood. She stated the way development has been allowed to build, has been devastating to the natural environment. She noted, she understood people needing a place to live, but preserving the natural landscape should be most important.

Mayor Eidingen closed the public hearing at 7:18pm.

Motion: Accept Ordinance No. 17-0504 for a 6 month moratorium on PRD applications,
Action: Approve, **Moved by** Councilmember Stephanie Shook, **Seconded by**
Councilmember Rosanne Tomyn. **Motion passed unanimously (7-0)**

4. MAYOR'S REPORT

Mayor Eidingen spoke about the following:

- Incident at a construction site around the 10300 block of 20th St. E. Shots fired, no injuries;
- SAFER Grant awarded to East Pierce Fire and Rescue;
- New Community Development Director Darren Groth starting August 21;
- FME Chamber to consider moving weekly networking meetings to Edgewood City Hall;
- Annual culvert maintenance on Jovita is being scheduled for August 25th and 26th, noted road closure between West Valley and 114th for up to two day; he also noted the "Projects Updates and Alerts" page on the website that is continually updated for folks to see what's happening in the city.

Assistant City Administrator Nix mentioned the Community Development Director position and the lengthy process. He noted Mr. Groth is coming from Texas, is very intelligent and process oriented.

Chief Lundborg briefed on the following:

- Crime incidents;
- Community Picnic and impressed with the turnout;
- NNO- attended with 3 other officers and get more community involvement;
- Staff and officers celebrated Al and Barb Nyhuis 20 years of volunteerism with the Police Dept.;
- Pets And Pedestrians event on Wednesday, August 9th ;
- Speeding stats from PC District Court-367 filed in June 2016, a total of 266 written in the whole year, he noted this year has surpassed years past and one of his goals is to keep officers motivated to do traffic enforcement.

5. CONSENT AGENDA

The consent agenda includes items that are routine in nature and are adopted by one motion. Should Council wish to discuss a consent agenda item, the item would be removed from the consent agenda and discussed under Council Business.

The following items are presented for Council approval:

A. Study Session and Special Council Meeting Minutes of August 1, 2017.

B. **AB 17-032**, a motion approving August 2017 Budgeted Expenditures as follows: IRS 941 ACHs; AWC Employee Benefit Trust; Deferred Compensations Program; Dept. of Retirement Systems and Payroll Direct Deposit in the amount of \$87,428.30; and Vendor Check Numbers 22851-22872 with EFT Payments in the amount of \$3,892,458.06. Total distributions submitted for review & authorization in the amount of \$3,979,886.36.

Motion: As Read, **Action:** Approve, **Moved by** Councilmember Mark Creley, **Seconded by** Deputy Mayor Tyron Christopherson. **Motion passed unanimously (7-0).**

6. COUNCIL BUSINESS

A. **AB17-0505**, a motion to accept first reading of Ordinance No. 17-0505, granting a nonexclusive franchise to Seattle SMSA Limited Partnership, D/B/A Verizon Wireless, to construct and operate a telecommunications system within certain public rights-of-way; providing for severability, and establishing an effective date.

Assistant City Administrator Nix briefed on the agenda item.

Mark Kibler talked about dead spots- worse coverage around.

Assistant City Administrator Nix discussed that is what the company is trying to do, improve coverage in the area, and Staff is trying to manage that.

Motion: As Read, **Action:** Approve, **Moved by** Deputy Mayor Tyron Christopherson, **Seconded by** Councilmember Stephanie Shook. **Motion passed unanimously (7-0).**

B. **AB17-0506**, a motion to adopt Ordinance No. 17-0506, establishing the procedures for the amendment of the Comprehensive Plan and Development Regulations, consistent with the Growth Management Act (Chapter 36.70A RCW), describing the elements of a complete application, the steps involved in processing involving the Planning Commission and City Council, requiring public notice of public hearings, describing the content of the public notice, establishing the criteria for approval of amendments to Development Regulations and the Comprehensive Plan, describing the final action by the City Council, adopting a Public Participation Program as required by RCW 36.70A.140 and repealing Chapter 18.60 of the Edgewood Municipal Code, and adopting a new Chapter 18.60 to the Edgewood Municipal Code.

Assistant City Administrator Nix briefed on this agenda item.

Motion: As Read, **Action:** Approve, **Moved by** Councilmember Stephanie Shook, **Seconded by** Councilmember Rosanne Tomy. **Motion passed unanimously (7-0).**

7. COUNCIL COMMENTS

Councilmember Tomya reminded folks that Friday, 8/11 the PRAB movie night will be outside, showing: Lego Batman- 8:45pm

Councilmember Meyers noted the property down the hill on West Valley and perhaps a conversation with Sumner needs to occur regarding the trash, and graffiti. He noted it is definitely a public safety hazard- nuisance and someone needs to put notice on that property. He also commented on the City of Puyallup with their homelessness. He asked Chief to keep Council updated on any concerns of individuals looking for the next available spot here in Edgewood.

Councilmember Creley noted he has seen Officer Johnson on his motorcycle in the warmer weather.

Chief discussed the Facebook post on Officer Johnson regarding going out of his way for a citizen and helping them out.

8. EXECUTIVE SESSION

Mayor Eiding asked City Attorney Carol Morris if there was an executive session.

City Attorney Morris stated there would be an Executive Session pursuant to RCW 42.30.110(1)(b), the City Council will now convene an executive session for the purpose of discussing the consideration of the selection of a site or the acquisition of real estate with legal counsel. The Executive Session will last approximately 10 minutes.

Mayor Eiding recessed the meeting to Executive Session at 7:47pm for 10 minutes.

Mayor Eiding extended the Executive Session at 7:57pm for 5 minutes.

Mayor Eiding called the meeting back to order at 8:02pm.

9.ADJOURN

Mayor Eiding adjourned the meeting at 8:03pm.

Rachel Pitzel, City Clerk

Daryl Eiding, Mayor



**CITY OF EDGEWOOD
COUNCIL STUDY SESSION SUMMARY**

Tues., August 15, 2017 – 7:00 PM “ City Hall – 2224 104th Avenue East ” Edgewood, WA

1. CALL TO ORDER

Mayor Eidinger called the meeting to order at 7:00pm and CM Lowry led attendees in the Pledge of Allegiance.

ROLL CALL

Present: Mayor Daryl Eidinger (Not voting), Councilmember Donna O'Ravez, Councilmember Mark Creley, Councilmember Luke Meyers, Deputy Mayor Tyron Christopherson, Councilmember Stephanie Shook, Councilmember Nate Lowry. **Excused:** Councilmember Rosanne Tomin.

Staff Present: Assistant City Administrator Dave Gray, Assistant City Administrator Aaron Nix, City Clerk Rachel Pitzel, Jeremy Police Chief Micah Lundborg.

2. COUNCIL BUSINESS

A. Discussion – Public Fund Contributions

Assistant City Administrator Dave Gray briefed Council on public fund contributions, and what that means. He noted having the yearly audit with WCIA and working on this process. He also discussed the Advisory Boards and Commissions and what their knowledge is on what they can do and what kind of “authority” they have in decision making, he clarified that these are ‘advisory’ volunteer positions, the Council makes decisions on whether to move forward with advice or recommendations those committees give Council. Advisory Boards do not have the authority to spend city funds, those decisions come from Council.

Discussion followed between staff and the Council.

B. Discussion – Surplus of Computer & Equipment

Assistant City Administrator Gray discussed surplus of miscellaneous equipment, computers, and electronics as surplus and administer the donation of sale of the items. He also noted, with Council’s okay- it would be placed on the consent agenda for next week’s regular council meeting.

3. OTHER COUNCIL ISSUES

Deputy Mayor Christopherson- Albertson closing Nov. 9th. He noted this was a shock to both communities and employees, current store as liquidating store until supplies in store are depleted. Christopherson is proposing council to take action and draft letter to Albertson’s.

Councilmember Meyers noted this is a unique opportunity for Edgewood to get something in our city.

Councilmember Creley noted speed limits and wondering if we can move forward with reducing speed limits within the city.

Chief Lundborg gave an update on the major accidents that occurred recently.

Assistant City Administrator Nix noted we are currently working on CIP, in order to lower speed limits; you have to have a traffic analysis done before that can happen. We can start focusing on traffic calming – such as roundabouts, etc.

Councilmember Meyers would like to see on 122nd, a series of roundabouts- what would the timeline look like.

Discussion took place regarding traffic, speed limits, and crosswalks.

4. ADJOURN

Mayor Eidinger adjourned the meeting at 7:40pm.

Mayor Eidinger reconvened the meeting at 8:41pm and announced the Special Council meeting.



CITY OF EDGEWOOD SPECIAL COUNCIL MEETING MINUTES

Tues., August 15, 2017 – following Study Session “ City Hall – 2224 104th Avenue East ”

1. CALL TO ORDER

Mayor Eidinger called the special meeting to order at 7:41pm and noted that the same members are in attendance from the study session prior to the special meeting.

Staff Present: Assistant City Administrator Dave Gray, Assistant City Administrator Aaron Nix, City Clerk Rachel Pitzel, Police Chief Micah Lundborg.

3. COUNCIL BUSINESS

A. AB 17-0381, a motion to adopt Resolution No. 17-0381, approving the Edgewood View Pointe Final Plat

Assistant City Administrator Nix noted a change in format, and this is part of the cleanup – he noted what Council will see is the new attorney cleaning up these final plats and how they are brought to Council. He stated the developer has worked hard in getting this to where we are now.

Jeremy Metzler discussed the 46-lot subdivision, he noted the 87 Hearing Examiner conditions that have been satisfied, and he summarized some of those improvements.

Councilmember Meyers- discussed the parcel to the N. and access on 11th Street. He noted the potential traffic getting on to Meridian, and stated it was a challenge for citizens to get out of their area.

Motion: As Read, **Action:** Approve, **Moved by** Deputy Mayor Tyron Christopherson, **Seconded by** Councilmember Nate Lowry. **Motion passed unanimously (6-0).**

4. ADJOURN

Mayor Eidinger adjourned the meeting at 7:54pm.

Rachel Pitzel, City Clerk

Daryl Eiding, Mayor



CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 17-033

Date Action Requested: August 22, 2017

Title: **AB17-033**, a motion approving August 2017 Budgeted Expenditures as follows: IRS 941 ACHs; Deferred Compensations Program; Dept. of Retirement Systems and Payroll Direct Deposit in the amount of \$47,429.41; and Vendor Check Numbers 22873-22903 with EFT Payments in the amount of \$152,010.66. Total distributions submitted for review & authorization in the amount of \$199,440.07

Attachments: Payment Distribution Review & Authorization, Voucher Directory

Submitted By: Dave Gray, Assistant City Administrator, Finance

Approved For Agenda By: Mayor Daryl Eiding

Prepared For Agenda By: Rachel Pitzel, City Clerk

Recommendation: Move to Approve AB17-033

Discussion: Approval of Claims and Payroll Expenditures

Alternatives: 1) Do not approve. 2) Refer to Council Study Session for Further Review.

Fiscal Impact: An increase in the sum of \$199,440.07 to authorized Budgeted Expenditures.

Number	Name	Print Date	Amount
US Bank PAYROLL ACCOUNT DISTRIBUTION			
10606 Last Number Issued Previous Authorization			
DCP EFT 8/15/17	Deferred Compensation Program	8/15/2017	\$4,576.57
Direct Deposit Run - 8/15/17	Payroll Vendor	8/15/2017	\$30,744.70
DRS EFT 8/15/17	Dept of Retirement Systems	8/15/2017	\$7,131.77
IRS EFT 8/15/17	IRS 941	8/15/2017	\$4,976.37
Total			\$47,429.41

Number	Name	Print Date	Amount
CLAIM VOUCHER ACCOUNT DISTRIBUTION			
22872 Last Number Issued Previous Authorization			
22873	A & R Services dba Angela Rojo	8/22/2017	\$785.00
22874	BHC Consultants	8/22/2017	\$7,290.16
22875	City of Edgewood	8/22/2017	\$3,250.00
22876	City of Sumner	8/22/2017	\$2,677.13
22877	Copiers Northwest	8/22/2017	\$24.46
22878	Drain-Pro	8/22/2017	\$290.00
22879	Environmental Science Associates	8/22/2017	\$17,014.50
22880	Form Source, Inc.	8/22/2017	\$316.13
22881	Gray & Osborne, Inc	8/22/2017	\$657.12
22882	Herrera Environmental Consultants, Inc.	8/22/2017	\$15,645.71
22883	Jennings Equipment, Inc.	8/22/2017	\$25.69
22884	Landau Associates	8/22/2017	\$8,008.82
22885	Lindsey Electric LLC	8/22/2017	\$483.56
22886	McCarthy & Causseaux	8/22/2017	\$1,337.00
22887	Morris Law PC	8/22/2017	\$6,095.00
22888	Northwest Landscape Services	8/22/2017	\$826.74
22889	Office Depot	8/22/2017	\$137.90
22890	PanGEO, Inc.	8/22/2017	\$412.50
22891	Petersen Brothers, Inc.	8/22/2017	\$29,534.65
22892	Pierce County Budget & Finance 2% Dist	8/22/2017	\$619.50
22893	Pierce County Budget & Finance PW	8/22/2017	\$595.54
22894	Pierce County Budget & Finance Sheriff	8/22/2017	\$5,667.51
22895	Pierce County Budget and Finance Dept.	8/22/2017	\$45.00
22896	Pitney Bowes	8/22/2017	\$164.16
22897	Kirk McArthur, K&D Homes	8/22/2017	\$39,191.42
22898	Wallace's Stoves	8/22/2017	\$110.00
22899	Shred-it	8/22/2017	\$281.88
22900	Smarsh, Inc.	8/22/2017	\$199.60
22901	Sterling Automotive Service	8/22/2017	\$488.23
22902	The News Tribune	8/22/2017	\$2,164.93
22903	Transpo Group	8/22/2017	\$1,300.00
EFT Payment 8/16/2017	McLendon Hardware-Blue Tarp Credit Services	8/22/2017	\$10.76
EFT Payment 8/16/2017	Puget Sound Energy	8/22/2017	\$3,668.87
EFT Payment 8/16/2017	Shell	8/22/2017	\$536.00
EFT Payment 8/16/2017	US Bank Corporate Payment System	8/22/2017	\$1,673.09
EFT Payment 8/16/2017	Wells Fargo Financial Leasing	8/22/2017	\$85.93
EFT Payment 8/16/2017	Wells Fargo Vendor Fin Serv	8/22/2017	\$368.17
EFT Payment 8/16/2017	US Bank ACH/EFT	8/22/2017	\$28.00
Grand Total			\$152,010.66

Total Claims Voucher Distribution	\$152,010.66
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Total Distribution Submitted for Review & Authorization	\$199,440.07
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Authorization Adjustments:

Total Distribution Net of Prior Authorized Adjustments	\$199,440.07
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Claims Voucher Approval: I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed

Mayor, Daryl Eidinger

Council Member



Voucher Directory

Vendor	Number	Reference	Account Number	Description	Amount
A & R Services dba Angela Rojo	22873			2017 - August - 2nd Council Meeting	
		428			
			August Services		
			001-018-000-518-30-41-01	Professional Services	\$785.00
				Monthly Janitorial Svs. for August	
		Total 428			\$785.00
	Total 22873				\$785.00
Total A & R Services dba Angela Rojo					\$785.00
BHC Consultants	22874			2017 - August - 2nd Council Meeting	
		0009072			
			6/24-7/21/17 Svcs		
			001-058-000-558-60-41-03	Prof. Services (Non-reimbursable)	\$7,290.16
				Planning Services	
		Total 0009072			\$7,290.16
	Total 22874				\$7,290.16
Total BHC Consultants					\$7,290.16
City of Edgewood	22875			2017 - August - 2nd Council Meeting	
		081517-COE			
			SEPA Legal Publication Fee		
			001-058-000-558-60-41-08	Legal Notices/Publications	\$3,250.00
				SEPA Critical Areas	
		Total 081517-COE			\$3,250.00
	Total 22875				\$3,250.00
Total City of Edgewood					\$3,250.00
City of Sumner	22876			2017 - August - 2nd Council Meeting	
		03527			
			August Services		
			001-018-000-554-30-51-01	Animal Control Services	\$2,677.13
				Animal Control Svs. for August	
		Total 03527			\$2,677.13
	Total 22876				\$2,677.13
Total City of Sumner					\$2,677.13

Vendor	Number	Reference	Account Number	Description	Amount
Copiers Northwest					
	22877			2017 - August - 2nd Council Meeting	
		INV1614130			
			7/14-8/13/17 Overage Charges		
			001-018-000-518-30-45-06	Copier Lease	\$24.46
				Lexmark Printers	
		Total INV1614130			\$24.46
	Total 22877				\$24.46
Total Copiers Northwest					\$24.46
Drain-Pro					
	22878			2017 - August - 2nd Council Meeting	
		34890			
			8/13-9/9/17 Rental		
			001-076-000-576-80-45-03	Operating Rentals	\$145.00
				Nelson Farm	
		Total 34890			\$145.00
		34891			
			8/13-9/9/17 Rental		
			001-076-000-576-80-45-03	Operating Rentals	\$145.00
				Nature Park	
		Total 34891			\$145.00
	Total 22878				\$290.00
Total Drain-Pro					\$290.00
Environmental Science Associates					
	22879			2017 - August - 2nd Council Meeting	
		129920			
			6/12-7/28/17 Svcs-Prj D170117.00		
			001-058-000-558-60-41-23	Professional Serv-GMA	\$15,022.00
				Critical Areas & BAS Update	
		Total 129920			\$15,022.00
		130082			
			7/31-8/11/17 Svcs-Prj D170117.00		
			001-058-000-558-60-41-23	Professional Serv-GMA	\$1,992.50
				Critical Areas & BAS Update-Final Invoice	
		Total 130082			\$1,992.50
	Total 22879				\$17,014.50
Total Environmental Science Associates					\$17,014.50
Form Source, Inc.					
	22880			2017 - August - 2nd Council Meeting	
		851997			
			August Services		
			001-018-000-518-20-31-01	Office & Operational Supplies	\$316.13

Vendor	Number	Reference	Account Number	Description	Amount
				Business Cards-Pederson, Centen, Metzler, Nix, Groth, Eidinger	
		Total 851997			\$316.13
	Total 22880				\$316.13
Total Form Source, Inc.					\$316.13
Gray & Osborne, Inc					
	22881			2017 - August - 2nd Council Meeting	
		2-G&O prj 16463.09			
			July Svcs-View Point Prj 16463.09		
			001-058-000-558-60-41-01	Reim.Engineering - Prof. Serv	\$657.12
				View Point Certificate of Completion	
		Total 2-G&O prj 16463.09			\$657.12
	Total 22881				\$657.12
Total Gray & Osborne, Inc					\$657.12
Herrera Environmental Consultants, Inc.					
	22882			2017 - August - 2nd Council Meeting	
		40774			
			July Svcs-Prj 17-06504-000		
			410-000-000-531-38-41-02	Prof. Service-Plan Update	\$15,645.71
				SWMP Update	
		Total 40774			\$15,645.71
	Total 22882				\$15,645.71
Total Herrera Environmental Consultants, Inc.					\$15,645.71
Jennings Equipment, Inc.					
	22883			2017 - August - 2nd Council Meeting	
		78142			
			August Purchases-Acct 25556		
			001-076-000-576-80-35-01	Small Tools/Minor Equipment	\$25.69
				Kubota Mower-Linch Pin, Spacer	
		Total 78142			\$25.69
	Total 22883				\$25.69
Total Jennings Equipment, Inc.					\$25.69
Landau Associates					
	22884			2017 - August - 2nd Council Meeting	
		0039700			
			July Svcs-Prj 0495075.010		
			001-058-000-558-60-41-01	Reim.Engineering - Prof. Serv	\$7,158.82
				Westridge/Conner Homes Plat	
		Total 0039700			\$7,158.82

Vendor	Number	Reference	Account Number	Description	Amount
		0039710			
			July Svcs-Prj 0495099.010		
			001-058-000-558-60-41-01	Reim.Engineering - Prof. Serv	\$850.00
				Pohlman Residence	
		Total 0039710			\$850.00
	Total 22884				\$8,008.82
Total Landau Associates					\$8,008.82
Lindsey Electric LLC					
22885				2017 - August - 2nd Council Meeting	
		000024			
			July Services		
			001-076-000-576-80-51-01	Parks Maintenance	\$483.56
				Barn & Park GFCI work	
		Total 000024			\$483.56
	Total 22885				\$483.56
Total Lindsey Electric LLC					\$483.56
McCarthy & Causseaux					
22886				2017 - August - 2nd Council Meeting	
		189			
			July Services		
			001-015-000-515-32-41-14	Hearing Examiner Legal Fees	\$1,337.00
				Northwood, Edgewood Terrace	
		Total 189			\$1,337.00
	Total 22886				\$1,337.00
Total McCarthy & Causseaux					\$1,337.00
McLendon Hardware-Blue Tarp Credit Services					
		EFT Payment 8/16/2017 3:59:50 PM - 1		2017 - August - 2nd Council Meeting	
		D65309/3			
			June Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	\$3.05
				Ant Bait	
		Total D65309/3			\$3.05
		D94198/3			
			July Purchases		
			001-076-000-576-80-35-01	Small Tools/Minor Equipment	\$7.71
				Drill Bits, Misc Nuts & Screws	
		Total D94198/3			\$7.71
	Total EFT Payment 8/16/2017 3:59:50 PM - 1				\$10.76
Total McLendon Hardware-Blue Tarp Credit Services					\$10.76

Vendor	Number	Reference	Account Number	Description	Amount
Morris Law PC	22887			2017 - August - 2nd Council Meeting	
		080417-MOR			
		July Services			
		001-015-000-515-32-41-01		Legal Services	\$6,095.00
		Total 080417-MOR			\$6,095.00
	Total 22887				\$6,095.00
Total Morris Law PC					\$6,095.00
Northwest Landscape Services	22888			2017 - August - 2nd Council Meeting	
		RC000029387			
		August Services			
		101-000-000-542-70-48-04		Road Maint ROW Veg Maint Contractor	\$826.74
		Total RC000029387			\$826.74
	Total 22888				\$826.74
Total Northwest Landscape Services					\$826.74
Office Depot	22889			2017 - August - 2nd Council Meeting	
		947334606001			
		July Purchases			
		001-018-000-518-20-31-01		Office & Operational Supplies	\$65.69
				Batteries, Badge Carabiners, Paper Note Pads	
		Total 947334606001			\$65.69
		949258841001			
		August Purchases			
		001-018-000-518-20-31-01		Office & Operational Supplies	\$47.25
				Labels	
		Total 949258841001			\$47.25
		949258918001			
		August Purchases			
		001-018-000-518-20-31-01		Office & Operational Supplies	\$24.96
				Post-It Flags	
		Total 949258918001			\$24.96
	Total 22889				\$137.90
Total Office Depot					\$137.90
PanGEO, Inc.	22890			2017 - August - 2nd Council Meeting	
		11930			
		Aug Svcs-Prj 16-314			
		001-058-000-558-60-41-03		Prof. Services (Non-reimbursable)	\$412.50
				Heikkinen Ravine Stability	
		Total 11930			\$412.50
	Total 22890				\$412.50
Total PanGEO, Inc.					\$412.50

Vendor	Number	Reference	Account Number	Description	Amount
Petersen Brothers, Inc.	22891			2017 - August - 2nd Council Meeting	
		1710101			
			Contract 17-101		
			101-000-000-542-64-41-19	Guardrails	\$29,534.65
		Total 1710101			\$29,534.65
	Total 22891				\$29,534.65
Total Petersen Brothers, Inc.					\$29,534.65
Pierce County Budget & Finance 2% Dist	22892			2017 - August - 2nd Council Meeting	
		CI-236419			
			Q2 2017 Liquor/Excise Tax		
			001-021-000-521-10-52-01	Intergov. Chemical Dependency	\$619.50
		Total CI-236419			\$619.50
	Total 22892				\$619.50
Total Pierce County Budget & Finance 2% Dist					\$619.50
Pierce County Budget & Finance PW	22893			2017 - August - 2nd Council Meeting	
		CI-236338			
			June Services		
			101-000-000-542-64-51-02	Traffic Operations (Contract)	\$595.54
		Total CI-236338			\$595.54
	Total 22893				\$595.54
Total Pierce County Budget & Finance PW					\$595.54
Pierce County Budget & Finance Sheriff	22894			2017 - August - 2nd Council Meeting	
		CI-236349			
			March & July OT		
			001-021-000-521-20-51-02	Police Overtime	\$5,667.51
		Total CI-236349			\$5,667.51
	Total 22894				\$5,667.51
Total Pierce County Budget & Finance Sheriff					\$5,667.51
Pierce County Budget and Finance Dept.	22895			2017 - August - 2nd Council Meeting	
		CI-236387			
			Q2 2017 IT Services		
			001-014-000-518-80-49-03	Computer Subscriptions	\$45.00
			IT WAN -Metzler		
		Total CI-236387			\$45.00
	Total 22895				\$45.00
Total Pierce County Budget and Finance Dept.					\$45.00

Vendor	Number	Reference	Account Number	Description	Amount
Pitney Bowes					
	22896			2017 - August - 2nd Council Meeting	
		1004839499			
			July Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	\$134.50
				Red Ink-Postage Machine	
		Total 1004839499			\$134.50
		1004848900			
			July Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	\$29.66
				Postage Machine Supplies	
		Total 1004848900			\$29.66
	Total 22896				\$164.16
Total Pitney Bowes					\$164.16
Puget Sound Energy					
	EFT Payment 8/16/2017 3:59:50 PM - 2			2017 - August - 2nd Council Meeting	
	300000011233	July 2017			
		July 2017 Statement			
			001-018-000-518-20-47-01	Electricity	\$3,668.87
		Total 300000011233 July 2017			\$3,668.87
	Total EFT Payment 8/16/2017 3:59:50 PM - 2				\$3,668.87
Total Puget Sound Energy					\$3,668.87
Refunds/Reimbursements Vendor					
	22897			2017 - August - 2nd Council Meeting	
		080417-KM		Kirk McArthur, K&D Homes	
			Funds Release-Permit 4532		
			640-000-000-586-10-00-01	Assignment of Funds-Deposits in Lieu of Bond	\$30,616.31
				Full Release-Permit 4532 (2) Northwood Estates	
			640-000-000-586-10-00-01	Assignment of Funds-Deposits in Lieu of Bond	\$8,575.11
				Partial Release-Permit 4532 (1) Northwood Estates	
		Total 080417-KM			\$39,191.42
	Total 22897				\$39,191.42
	22898			2017 - August - 2nd Council Meeting	
		080717-WS		Wallace's Stoves	
			Refund #17-1304 Meisch		
			001-000-000-322-10-00-02	Mechanical Permit	\$110.00
				Permit 17-1304 Cancelled	
		Total 080717-WS			\$110.00
	Total 22898				\$110.00
Total Refunds/Reimbursements Vendor					\$39,301.42

Vendor	Number	Reference	Account Number	Description	Amount
Shell		EFT Payment 8/16/2017 3:59:50 PM - 3	2017 - August - 2nd Council Meeting		
		8000093974708			
		July Purchases			
		001-018-000-518-30-32-01	Fuel		\$536.00
		Total 8000093974708			\$536.00
		Total EFT Payment 8/16/2017 3:59:50 PM - 3			\$536.00
Total Shell					\$536.00
Shred-it	22899		2017 - August - 2nd Council Meeting		
		8122833927			
		July Services			
		001-018-000-518-30-41-01	Professional Services		\$281.88
		Total 8122833927			\$281.88
		Total 22899			\$281.88
Total Shred-it					\$281.88
Smarsh, Inc.	22900		2017 - August - 2nd Council Meeting		
		INV00251062			
		July Services			
		001-014-000-518-80-49-03	Computer Subscriptions		\$199.60
		Total INV00251062			\$199.60
		Total 22900			\$199.60
Total Smarsh, Inc.					\$199.60
Sterling Automotive Service	22901		2017 - August - 2nd Council Meeting		
		0024402			
		August Services			
		001-018-000-518-30-48-07	Maintenance & Repairs-Vehicles		\$488.23
			2003 Chevy S10-Replace Shfter Cable		
		Total 0024402			\$488.23
		Total 22901			\$488.23
Total Sterling Automotive Service					\$488.23
The News Tribune	22902		2017 - August - 2nd Council Meeting		
		255556 6/26-7/30/17			
		6/26-7/30/17 Services			
		001-014-000-511-30-41-02	Legal Publications		\$312.86
			Legal Notice		
		001-058-000-558-60-41-08	Legal Notices/Publications		\$1,852.07
			Legal Notice		
		Total 255556 6/26-7/30/17			\$2,164.93
		Total 22902			\$2,164.93
Total The News Tribune					\$2,164.93

Vendor	Number	Reference	Account Number	Description	Amount
Transpo Group	22903			2017 - August - 2nd Council Meeting	
		20644			
			July Svcs-Prj 0.13312.00		
			001-058-000-558-60-41-01	Reim.Engineering - Prof. Serv	\$1,300.00
				Northwood Estates 16-54	
		Total 20644			\$1,300.00
	Total 22903				\$1,300.00
Total Transpo Group					\$1,300.00
US Bank ACH/EFT					
	EFT Payment 8/16/2017 3:59:23 PM - 1			2017 - August - 2nd Council Meeting	
	073117-USBank				
			July Safekeeping Fee		
			001-014-000-514-20-42-05	Bank & Bond Fees	\$28.00
		Total 073117-USBank			\$28.00
	Total EFT Payment 8/16/2017 3:59:23 PM - 1				\$28.00
Total US Bank ACH/EFT					\$28.00
US Bank Corporate Payment System					
	EFT Payment 8/16/2017 3:59:50 PM - 4			2017 - August - 2nd Council Meeting	
	072517-USBank				
			July Statement		
			001-013-000-513-10-31-05	Meeting Meals Expense	\$39.52
				D.Eidinger-Pizza Hut-Milton PW Lunch	
			001-014-000-514-20-43-04	Conference Meals	\$50.00
				S.Goff-PSFOA-Lunch Meeting	
			001-014-000-514-30-49-01	Memberships	\$184.00
				R.Pitzel-SHRM-Membership	
			001-018-000-518-20-31-01	Office & Operational Supplies	\$73.58
				A.Nix-DS Services-City Hall Water Delivery	
			001-018-000-518-20-31-01	Office & Operational Supplies	\$177.50
				J.Herrera-Fluorescent Bulbs	
			001-018-000-518-30-31-01	Office & Operational Supplies	\$6.59
				D.Eidinger-ESI Security-Snow Plow Keys	
			001-018-000-518-30-35-01	Small Tools/Minor Equip.	\$32.99
				D.Eidinger-Harbor Freight-Tool Set	
			001-018-000-518-30-35-01	Small Tools/Minor Equip.	\$36.29
				D.Eidinger-Harbor Freight-Tow Strap	
			001-018-000-518-30-48-07	Maintenance & Repairs-Vehicles	\$10.00
				D.Eidinger-Tahoma Mkt-Car Wash	
			001-018-000-518-30-48-07	Maintenance & Repairs-Vehicles	\$450.02
				D.Eidinger-Sterling Auto-87 Chevy Steering Repair	
			001-021-000-521-20-35-01	Small Tools/Minor Equipment	\$42.24
				D.Eidinger-Lowes-Sally Port Door Supplies	

Vendor	Number	Reference	Account Number	Description	Amount	
			001-058-000-558-50-43-01	Training/Travel Costs	\$199.00	
			D.Mundy-NCS Pearson-Bldg Inspector Test			
			001-058-000-558-50-43-01	Training/Travel Costs	\$199.00	
			D.Mundy-NCS Pearson-Bldg Inspector Test			
			001-058-000-558-60-42-02	Postage	\$47.50	
			J.Herrera-USPS-Express Postage			
			001-058-000-558-60-43-04	Conference Meals	\$24.78	
			A.Nix-Yoko Teriyaki-Lunch-CDD Recruitment			
			001-076-000-576-80-31-01	Operational Supplies	\$9.89	
			S.Goff-Costco-Soap-Park Restrooms			
			001-076-000-576-80-31-01	Operational Supplies	(\$87.91)	
			H.Bowers-Lowes-Headset Return			
			001-076-000-576-80-31-01	Operational Supplies	\$41.21	
			J.Herrera-Amazon-TP for Parks			
			001-076-000-576-80-31-02	Operational Supplies	\$16.47	
			K.Rappe-Olivers-Movie Night Volunteer Dinner			
			001-076-000-576-80-31-11	Signs	\$41.51	
			D.Eidinger-McLendons-Nature Park Signage			
			001-076-000-576-80-32-01	Fuel	\$75.12	
			D.Eidinger-Star Ice & Fuel-Mower Propane			
			001-076-000-576-80-35-01	Small Tools/Minor Equipment	(\$96.21)	
			J.Herrera-Amazon-Headphone Return			
			410-000-000-531-38-43-01	Training/Travel Costs	\$50.00	
			J.Metzler-APA-Asset Mgmt Workshop			
			410-000-000-531-38-43-01	Training/Travel Costs	\$50.00	
			A.Nix-APWA-Asset Mgmt Workshop			
			Total 072517-USBank			\$1,673.09
			Total EFT Payment 8/16/2017 3:59:50 PM - 4			\$1,673.09
Total US Bank Corporate Payment System					\$1,673.09	
Wells Fargo Financial Leasing						
			EFT Payment 8/16/2017 3:59:50 PM - 5	2017 - August - 2nd Council Meeting		
			5004156501			
			9/4-10/3/17 Lease			
			001-018-000-518-30-45-06	Copier Lease	\$85.93	
			Lexmark Printers			
			Total 5004156501			\$85.93
			Total EFT Payment 8/16/2017 3:59:50 PM - 5			\$85.93
Total Wells Fargo Financial Leasing					\$85.93	
Wells Fargo Vendor Fin Serv						
			EFT Payment 8/16/2017 3:59:50 PM - 6	2017 - August - 2nd Council Meeting		
			67327437			
			September Lease			
			001-018-000-518-30-45-06	Copier Lease	\$368.17	

Vendor	Number	Reference	Account Number	Description	Amount
				Kyocera	
		Total 67327437			\$368.17
		Total EFT Payment 8/16/2017 3:59:50 PM - 6			\$368.17
Total Wells Fargo Vendor Fin Serv					\$368.17
Grand Total		Vendor Count	37		\$152,010.66



CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 17-0382

Date Action Requested: August 22, 2017

Title: A Motion To Approve Resolution No. 17-0382, authorizing the Mayor to declare miscellaneous obsolete equipment, computers, and electronics as surplus, and administer the donation or sale of the items.

Attachment: Resolution, & Exhibit A- List of Items

Submitted By: Mayor Daryl Eiding

Approved By: Mayor Daryl Eiding

Prepared By: City Clerk Rachel Pitzel

Recommendation: Move To Approve Resolution No. 17-0382, authorizing the Mayor to declare miscellaneous obsolete equipment, computers, and electronics as surplus, and administer the sale or donation of these items.

Discussion: Staff has been working to clean up and dispose of miscellaneous obsolete equipment. This is a simple process which will authorize the Mayor upon council approval of a resolution, to surplus obsolete equipment.

The city is in possession of obsolete computer equipment, electronics, and iPad's that are no longer in use or being retired as obsolete. There are also other miscellaneous items, old computer equipment, electronics, and office furniture that are taking up valuable space that is currently not available due to storage of unused & obsolete items.

By approval of this resolution, council will be authorizing the Mayor to work with staff to determine the most appropriate method for surplusing the equipment and documenting any proceeds which will be returned to the general fund.

Alternatives: 1) Do not adopt the Resolution. 2) Forward to a Study Session for further review.

Fiscal Impact: Nominal surplus revenue if any.

RESOLUTION NO. 17-0382

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, AUTHORIZING THE MAYOR TO DECLARE MISCELLANEOUS OBSOLETE EQUIPMENT, COMPUTERS, AND ELECTRONICS AS SURPLUS, AND ADMINISTER THE DONATION OR SALE OF THE ITEMS

WHEREAS, City staff have been working to clean up and prepare to dispose of miscellaneous obsolete computer equipment, electronics, cell phones; and the 2017 retirement of five year old City Council iPads where the operating system will shortly not be supported; and

WHEREAS, it is in the best interest of the City to free up valuable space that is currently not available due to storage of unused & obsolete items; and

WHEREAS, the City has received a request to donate the expiring City Council/City iPads for use by other government and non-profit organizations for reuse in reduced community service roles; and

WHEREAS, the City Council desires to formally authorize the Mayor to surplus said obsolete equipment;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Surplus Declaration. The City Council hereby declares these items surplus and authorizes the mayor to administer the sale of items with a value greater than the disposal cost, donation of items that serve the public interest but have nominal or no value to the City, and finally to dispose of those items remaining. A list of items is attached as Exhibit A. All City data shall be permanently removed from all data devices prior to loss of custody by the City with a certificate provided stating such disposal was done according to the highest industry standards.

Section 2. Effective Date. This resolution will take effect immediately upon passage by the City Council.

ADOPTED THIS 22TH DAY OF AUGUST, 2017

Daryl Eidinger, Mayor

ATTEST:

Rachel Pitzel, City Clerk

EXHIBIT A
Resolution 17-0382: Surplus of Equipment Computers

General List of Materials, Equipment, and Computers declared surplus:

Three (3) obsolete Computer Printers of various makes and models, not used in more than three years.

Various Cabinets removed in remodel.

Four (4) sets of Shelving removed in remodel.

Two (2) Bookcases in poor condition

Various modem, desktop computer speakers, computer connectivity cabling & devices

Various Computer monitor stands and monitors not used in more than 3 years

10 Council, Mayor and Clerk iPad's being retired for new models (at least five years old)

Various pieces of office furniture that have been stored for a number of years, in poor condition.

All the items listed have a nominal value if any, expected to exceed the cost of advertising or offering for sale, wherein such cost is likely to exceed any sales value returned.



CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 17-0505

Date: August 22, 2017

Title: Verizon Franchise Agreement (Seattle SMSA Limited Partnership Communications)

Attachments: Franchise Agreement with SMSA Limited Partnership, DBA Verizon Ordinance No. 17-0505 and 08/17/2017 email correspondence with Colin Robinson.

Submitted By: Aaron C. Nix, ACA Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Prepared For Agenda By: Aaron C. Nix, ACA Municipal Services

Discussion: Staff and the City Attorney have been working with Verizon (i.e. Seattle SMSA Limited Partnership), another extension to this Corporation, in establishing a Franchise Agreement to allow them the ability to construct, install, maintain, repair and operate a telecommunications system to provide telecommunications (data transport services) within the City's right of way, as dictated by Edgewood Municipal Code. As discussed on several occasions with the Council, Staff is exploring opportunities in which the City may benefit from this wireless infrastructure in exchange for the use of the City's right of way. As discussed at the Council's August 1st Study session, the Council's desires were made clearer directly to SMSA Limited Partnership. Staff has attempted to follow-up with SMSA Limited Partnership, based on these discussions, with limited interest on the part of SMSA in discussing this further.

Recommendation: Move to adopt Ordinance No. 17-0505, granting a non-exclusive franchise to Seattle SMSA Limited Partnership, D/B/A Verizon Wireless, to construct and operate a telecommunications systems within certain public rights-of-way; providing for severability; and establishing an effective date.

Alternatives: 1) Do not adopt. 2) Forward to Study Session for further review

Fiscal Impact: N/A

TELECOMMUNICATIONS FRANCHISE AGREEMENT

ORDINANCE NO. 17 -0505

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING A NONEXCLUSIVE FRANCHISE TO SEATTLE SMSA LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS, TO CONSTRUCT AND OPERATE A TELECOMMUNICATIONS SYSTEM WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the Public Rights-of-Way within the City belong to the public and are built and maintained at public expense for the use of the general public, the primary purpose of which is public travel, and must be managed and controlled consistent with that intent, and

WHEREAS, SEATTLE SMSA LIMITED PARTNERSHIP has made application to the City of Edgewood for a telecommunications franchise to construct, install, maintain, repair and operate a telecommunications system to provide telecommunications (data transport services) using specified portions of the Public Rights-of-Way, and

WHEREAS, SEATTLE SMSA LIMITED PARTNERSHIP represents that it is a telecommunications company within the meaning of Title 80 RCW and that it may provide competitive telecommunications services within the meaning of Title 80 RCW, and

WHEREAS, based on representations and information provided by SEATTLE SMSA LIMITED PARTNERSHIP and in response to its request for the grant of a franchise, the City Council has determined that the grant of a nonexclusive franchise, on the terms and conditions herein and subject to applicable law, is consistent with the public interest; and

WHEREAS, the City is authorized by applicable law to grant such nonexclusive franchise within the boundaries of the City;

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

ARTICLE 1. DEFINITIONS

Except as provided at Section 3.7 herein (order of precedence), for the purposes of this Franchise and the Exhibits attached hereto, the following terms, phrases, words and their derivations where capitalized shall have the meanings given herein. Words not defined herein shall have the meaning given in relevant sections of the Edgewood Municipal Code. Words not defined herein or in the Edgewood Municipal Code, shall have the meaning given pursuant to such state and federal statutes, rules, or regulations that apply to and regulate the services provided by the Franchisee now existing or hereafter amended, including without limitation the definitions and word usages set forth in the Communications Act (as hereafter defined). Words not otherwise defined, shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular,

and words in the singular include the plural. The word “shall” is always mandatory and not merely directory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision.

“Affiliate” when used in connection with Franchisee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Franchisee.

“Mayor” means and refers to the City of Edgewood Mayor or his or her designee.

“Breach” shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise.

“City” shall mean the City of Edgewood, a municipal corporation organized as a non-charter code city, operating under the laws of the state of Washington.

“Communications Act” shall mean the Communications Act of 1934, 47 U.S.C. 151, et seq., as amended by the Cable Communications Policy Act of 1984, the Cable Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and as it may be amended from time to time.

“Construct” shall mean to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, operate, maintain, repair, replace, upgrade, excavate, dig, restore, remove, and/or support.

“Corrective Action” shall mean a Party undertaking action as provided in this Franchise to perform a duty or obligation that the other Party is obligated to but has failed to perform.

“Design Document(s)” shall mean the plans and specifications, in electronic form and in a file format requested by the City, for the Construction of the Facilities illustrating and describing the refinement of the design of the Facilities to be Constructed, establishing the scope, relationship, forms, size and appearance of the Facilities by means of plans, design specifications or standards, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

“100% Design Submittal” means a Design Document, in electronic form and in a file format requested by the City, upon which Franchisee’s contractors will rely in constructing the Facilities.

“Direct Costs” shall mean and include all administrative expenses allowed to be charged by the City to Franchisee under RCW 35.21.860(1)(b) including administrative expenses directly related to approving this Franchise, to inspecting plans and construction, or the preparation of a detailed environmental impact statement pursuant to RCW 43.21(C). .

“Development Permit” shall mean and refer to a project permit as that term is defined in EMC 18.20.070(D).

“Effective Date” shall mean and refer to that term as it is defined at Section 4.3 herein.

“Emergency” shall mean and refer to a sudden condition or set of circumstances that, (a) significantly disrupts or interrupts the operation of Facilities in the Public Rights-of-Way and Franchisee’s ability to continue to provide services if immediate action is not taken, or (b) presents an imminent threat of harm to persons or property if immediate action is not taken.

"Environmental Law(s)" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Model Toxics Control Act, and any similar or comparable state or local law.

“Facility (ies)” means any part or all of the facilities, equipment and appurtenances of Franchisee, whether underground, overhead, across, above, along, below, in, over, or through, and located within the Public Right-of-Way as part of the Franchisee’s Telecommunications Service, including but not limited to, conduit, case, pipe, line, fiber, fiber optic cables, cabling, coaxial cables, equipment, equipment boxes, cabinets and shelters, electric meters, backup power supplies, power transfer switches, telecom demarcation boxes, vaults, generators, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, towers, anchors, transmitters, receivers, antennas, and signage, and related materials and equipment; and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing.

“Franchise” shall mean the non-exclusive grant, once accepted, giving general permission to the Franchisee to enter into and upon the Public Rights-of-Way, and to use and occupy the same for the purposes authorized herein, all pursuant and subject to the terms and conditions of the Franchise Ordinance. Franchisee shall not be required to amend this Franchise to construct new Facilities within the Franchise Area.

“Franchisee” shall mean Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless and any of its Affiliates.

“Franchise Ordinance” shall mean this Ordinance setting forth the terms and conditions upon which the Franchisee shall be granted the Franchise.

“Franchise Area” shall mean collectively or individually the Public Rights-of-Way located within the incorporated area of the City, as depicted and described in Exhibit A-1.

"Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and any element, compound, mixture, solution, particle, or substance, which presents danger or potential danger for damage or injury to health, welfare, or to the environment, including, but not limited to: those substances which are inherently or potentially radioactive, explosive, ignitable, corrosive, reactive, carcinogenic, or toxic; those substances which have been recognized as dangerous or potentially dangerous to health, welfare, or to the environment by any federal, municipal, state, City, or other governmental or quasi-governmental authority, and/or any department or agency thereof; those substances which use, or

have its a component thereof or therein, asbestos or lead-based paint; and petroleum oil and any of its fractions.

“Law(s)” shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, Franchises, authorizations, environmental standards, orders, decrees and requirements of all federal, state, City and municipal governments, the departments, bureaus or commissions thereof, authorities, boards or officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Facilities, including the City acting in its governmental capacity, or other requirements. References to Laws shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended. Notwithstanding the foregoing, Laws shall not include any preempted law, amended law or newly created law (whether arising from the Federal’s, State’s, City’s or any other governmental authority’s lawful exercise of their powers, including the City’s police power as further described in Section 3.3, or otherwise), that violates Franchisee’s rights to continue or modify existing non-conforming uses, or any other changes to laws, which do not apply to previously-constructed real estate improvements or telecommunications facilities.

“Legal Action” shall mean filing a lawsuit or invoking the right to arbitration.

“Material Breach” shall mean any of the following circumstances that continues for a period of thirty (30) days after written notice and opportunity to cure (except that if the circumstance cannot reasonably be cured within the thirty (30) day period, then the circumstance shall not be deemed a Material Breach so long as the Party commences to cure within the thirty (30) day period and diligently pursues the cure):

- Breach of a Party’s obligation to defend or indemnify the other Party;
- If a Party attempts to evade any material provision of this Franchise or engages in any fraud or deceit upon the other Party;
- If Franchisee becomes insolvent, or if there is an assignment for the benefit of Franchisee’s creditors;
- If Franchisee fails to provide or maintain the insurance, bonds, cash deposit or other security required by this Franchise;
- A bad faith breach;
- A Transfer in violation of Section 2.7 (Transfer);
- Breach of Section 3.5 (Subsequent Action);
- Breach of Section 6.1 (Dispute Avoidance);
- Breach of Section 7.14 (Abandonment);
- Any breach that cannot practicably be cured; or
- Any non-material breach that is not cured as required pursuant to Section 6.3 herein.

“Non-Material Breach” means any breach that does not constitute a Material Breach.

“Noticed Party” shall mean the Party in receipt of notice that it is in breach.

“Person” means and includes any individual, corporation, partnership, association, joint-stock-company, Limited Liability Company, political subdivision, public corporation, taxing districts, trust, or

any other legal entity, but not the City or any Person under contract with the City to perform work in the Public Rights-of-Way.

“Party (ies)” shall mean either the City or the Franchisee or both, dependent upon the context.

“Public Rights-of-Way” means the surface of, and the space above, across, along, in over, through, under and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, shoulder, curb, landscape area between sidewalk and curb or shoulder, utility easement, way, lane, public way, drive, circle or other public right-of-way, including, any easement now or hereafter held by the City within the corporate boundaries of the City as now or hereafter constituted for the purpose of public travel, and over which the City has authority to grant permits, licenses or franchises for use thereof, but excluding railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, and excluding such similar facilities or property owned, maintained or leased by the City in its governmental or proprietary capacity or as an operator of a utility.

“Record Drawings” shall mean the “**As Built**” plans and specifications, in electronic form and in a file format requested by the City, showing the construction of the facilities illustrating and describing the refinement of the design of the Facilities as Constructed, establishing the final scope, relationship, forms, size and appearance of the Facilities by means of plans, design specifications or standards, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. In addition, the As Built plans and specifications shall include plans that identify other utilities, major material and systems, Public Right-of-Way improvements and restoration and repair locations.

“Regulatory Permit” means a permit issued under the regulatory authority of the City that provides specific requirements and conditions for Work to Construct Facilities within the Public Rights-of-Way and includes by way of example and not limitation, a Right-of-Way permit, construction permit, building permit, street utility cut permit, and clearing and grading permit.

“Remedy”, “Remediate” and “Remedial Action” shall have the same meaning as these are given under the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing regulations at Chapter 173-340 WAC.

“Service” shall mean the service or services authorized to be provided by the Franchisee under the terms and conditions of this Franchise.

“Telecommunications” shall have the same meaning as given under Section 3 of the Communications Act, 47 U.S.C. §153(43).

“Transfer” shall mean any transaction in which all or a portion of the Utility System (including all or a portion of the Facility) is sold, leased or assigned (except a sale or transfer that results in removal of a particular portion of the Utility System from the Public Rights-of-Way); or the rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another Person (the “Transferee”). A transfer of control of an operator shall not constitute a transfer as long as the same Person continues to hold the Franchise both before and after the transfer of control.

“Utility System” shall mean collectively the Facilities that together with other facilities, appurtenances and equipment of Franchisee or other Persons are used to provide a service or services whether or not such service is provided to the public.

“Work” shall mean any and all activities of the Franchisee, or its officers, directors, employees, agents, contractors, subcontractors, volunteers, invitees, or licensees, within the Public Rights-of-Way to Construct the Facilities pursuant to this Franchise.

ARTICLE 2. FRANCHISE GRANT

2.1 Public Right-of-Way Use Authorized. Subject to the terms and conditions of this Franchise, the City hereby grants to Franchisee a nonexclusive Franchise authorizing the Franchisee to Construct Facilities in, along, among, upon, across, above, over, and under the Public Rights-of-Ways located within the Franchise Area and authorized pursuant to a Regulatory Permit.

2.2 Authorized Services. The grant given herein expressly authorizes Franchisee to use the Public Rights-of-Way to Construct Facilities to provide Telecommunications Service. This authorization is limited and is not intended nor shall it be construed as granting Franchisee or any other Person the right, duty or privilege to use its Facilities or the Public Rights-of-Way to provide Services not specifically authorized therein. This Franchise shall not be interpreted to prevent the City from lawfully imposing additional conditions, including additional compensation conditions for use of the Public Rights-of-Way, should Franchisee provide Service other than Service specifically authorized herein.

2.3 No Rights Shall Pass to Franchisee by Implication. No rights shall pass to Franchisee by implication. Without limiting the foregoing and by way of example, this Franchise shall not include or be a substitute for:

2.3.1 Any other authorization required for the privilege of transacting and carrying on a business within the City that may be required by the Laws of the City;

2.3.2 Any agreement or authorization required by the City for Public Rights-of-Way users in connection with operations on or in Public Rights-of-Way or public property including, by way of example and not limitation, a utility permit; or

2.3.3 Any licenses, leases, easements or other agreements for occupying any other property or infrastructure of the City or other Persons to which access is not specifically granted by this Franchise including, without limitation, agreements for placing devices on poles, light standards, in conduits, in vaults, in or on pipelines, or in or on other structures or public buildings.

2.3.4 Any permits, including Regulatory Permits, or other authorizations that may be required under the zoning and land use code and development regulations of the City for the construction of Facilities within a particular zoning district in the City, including by way of example and not limitation, a conditional use permit or a variance.

2.4 Interest in the Public Right-of-Way. This Franchise shall not operate or be construed to convey title, equitable or legal, in the Public Rights-of-Way. No reference herein to a Public Right-of-Way shall be deemed to be a representation or guarantee by the City that its interest, or other right to control the use of such Public Right-of-Way, is sufficient to grant its use for such purposes. This Franchise shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give. The grant given herein does not confer rights other than as expressly provided in the grant hereof and is subject to the limitations in applicable Law.

Franchisee acknowledges that, where City has ownership rights, those ownership rights may terminate for other reasons, such as a street vacation. Franchisee further acknowledges that Franchisee's rights under this Franchise as to any Franchise Area, are subject and subordinate to all outstanding rights and encumbrances on City's Public Rights-of-Way, and any easements, other franchise agreements, licenses, permits or agreements in effect on or before the Effective Date; City therefore grants to Franchisee no more right, title and interest in any Public Right-of-Way than the City holds in such Public Rights-of-Way at the time of grant, and Franchisee hereby releases City from any and all liability, cost, loss, damage or expense in connection with any claims that City lacked sufficient legal title or other authority to convey the rights described herein. In case of eviction of Franchisee or Franchisee's contractors by anyone owning or claiming title to, or any interest in the Franchise Area, City shall not be liable to Franchisee or Franchisee's Contractors for any costs, losses or damages of any Party.

2.5 Condition of Franchise Area. Franchisee represents that it has inspected or will inspect the Franchise Area, and enters upon such Franchise Area with knowledge of its physical condition and the danger inherent in operations conducted in, on or near the Franchise Area. Franchisee accepts the Franchise Area in an "As-Is With All Faults" basis with any and all patent and latent defects and is not relying on any representations or warranties, expressed or implied, of any kind whatsoever from the City as to any matters concerning the Franchise Area, including, but not limited to the physical condition of the Franchise Area; zoning status; presence and location of existing utilities; operating history; compliance by the Franchise Area with Environmental Laws or other Laws and other requirements applicable to the Franchise Area; the presence of any Hazardous Substances or wetlands, asbestos, or other environmental conditions in, on, under, or in proximity to the Franchise Area; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Franchise Area; the condition of title to the Franchise Area, and the leases, easements, Franchises, orders, licensees, or other agreements, affecting the Franchise Area (collectively, the "Condition of the Franchise Area").

Franchisee represents and warrants to the City that neither Franchisee nor its contractors or subcontractors have relied and will not rely on, and the City is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Condition of the Franchise Area or relating thereto made or furnished by the City, or any agent representing or purporting to represent the City, to whomever made or given, directly or indirectly, orally or in writing. The City hereby disclaims any representations or warranty, whether expressed or implied, as to the design or condition of the Franchise Area, its merchantability or fitness for any particular purpose, the quality of the materials or workmanship of the Public Right-of-Way, or the conformity of any part of the Public Right-of-Way to its intended uses. The City shall not be responsible to Franchisee or any of Franchisee's contractors for any damages relating to the design, condition, quality, safety, merchantability or fitness for any

particular purpose of any part of the Public Right-of-Way present on or constituting any Franchise Area, or the conformity of any such property to its intended uses.

2.6 Franchise Nonexclusive. This Franchise shall be nonexclusive. Subject to the terms and conditions herein, the City may at any time grant authorization to others to use the Public Rights-of-Way for any lawful purpose; provided that such other uses do not unreasonably interfere with Franchisee's rights set forth in this Franchise including but not limited to Franchisee's use and placement of Franchisee's Facilities in any Public Right-of-Way and/or Franchise Area. Further, this Franchise shall in no way prevent or prohibit the City from using any of its Public Ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Public Ways.

2.7 Transfer. Franchisee may Transfer this Franchise after receipt by the City of Exhibit "A-1", or a form substantially similar to Exhibit "A-1", agreeing that Transferee(s) shall thereafter be responsible for all obligations of Franchisee with respect to the Franchise and guaranteeing performance under the terms and conditions of the Franchise and that Transferees will be bound by all the conditions of the Franchise and will assume all the obligations of the Franchisee arising after the effective date of Transfer. Such a Transfer shall relieve Franchisee of any further obligations under the Franchise, including any obligations not fulfilled by Franchisee's Transferee; provided that, the Transfer shall not in any respect relieve Franchisee, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, which acts or omissions occur prior to the time of the Transfer. This Franchise may not be transferred without filing or establishing with the City the insurance certificates, and performance bond as required pursuant to this Franchise, if any, and paying all Direct Costs, if any, to the City related to the Transfer.

Notwithstanding the foregoing, notice to the City shall not be required for a mortgage, hypothecation or an assignment of Franchisee's interest in the Franchise in order to secure indebtedness.

Franchisee may, without the prior written notice to the City: (i) lease the Facilities, or any portion thereof, to another Person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Facilities to another Person; provided that, Franchisee at all times retains exclusive control over its Facilities and remains responsible for all obligations under this Franchise, including but not limited to Constructing its Facilities pursuant to the terms and conditions of this Franchise, and provided further that, Franchisee may grant no rights to any such Person that are greater than any rights Franchisee has pursuant to this Franchise; such Persons shall not be construed to be a third-party beneficiary hereunder; and, no such Person may use the Facilities for any purpose not authorized herein.

2.8 Street Vacation. If any Public Right-of-Way or portion thereof used by Franchisee pursuant to this Franchise is to be vacated during the Franchise Term, unless as a condition of such vacation the Franchisee is granted the right to continue its Facilities in the vacated Public Right-of-Way, Franchisee shall, without delay or expense to City, within ninety (90) days after Franchisee's receipt of written notice from City, remove its Facilities from such Public Right-of-Way, and restore, repair or reconstruct the Public Right-of-Way where such removal has occurred, and place the Public Right-of-Way where such removal has occurred, in as good or better a condition as existed immediately prior to the removal of Franchisee's Facilities, unless a lesser condition may be required by the City.

2.9 Reservation of City Use of Public Right-of-Way. Nothing in this Franchise shall prevent the City from constructing sanitary or storm sewers; grading, changing grade, paving, repairing or altering any Public Right-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable; provided that City's use shall not unreasonably interfere with Franchisee's rights set forth in this Franchise including but not limited to Franchisee's use and placement of Franchisee's Facilities in any Public Right-of-Way and/or Franchise Area.

ARTICLE 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE

3.1 Compliance with Laws. Except as provided herein pursuant to Section 3.3, Franchisee shall comply fully with all applicable Laws as now or hereafter in effect, and any lawful orders from regulatory agencies or courts with jurisdiction over Franchisee and its Facilities, or over the City and the Public Rights-of-Way, and shall fully indemnify, protect, defend and hold harmless the City, its officials, officers and employees from and against any and all claims, losses, suits, penalties, costs and causes of action arising from any failure by Franchisee to so comply except to the extent caused by the negligence or willful misconduct of City or its agents, employees or contractors. Notwithstanding anything to the contrary contained in this Franchise, City authorizes and acknowledges Franchisee's use of Hazardous Substances used in the normal course of providing Telecommunications Services including, without limitation, backup batteries, and such use shall not be deemed a failure to comply with Laws.

3.2 Police Powers. Franchisee acknowledges that its rights hereunder are subject to those powers expressly reserved by the City and further are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety and welfare of the public. Franchisee agrees to comply with all lawful and applicable general ordinances now or hereafter enacted by the City pursuant to such power. Such powers expressly include but are not limited to, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations governing work performed in the Public Right-of-Way.

3.3 Alteration of Material Terms and Conditions. Subject to federal and State preemption, the material rights, benefits, obligations or duties as specified in this Franchise may not be unilaterally altered by the City through subsequent amendments to any ordinance, regulation, resolution or other enactment of the City, except within the lawful exercise of the City's police power, which the City hereby expressly reserves in full.

3.4 Reservation of Rights/Wavier. The City shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable Law, or to delegate that power and right, or any part thereof, to the extent permitted under Law, to any agent in the sole discretion of the City. The City expressly reserves all of its rights, authority and control arising from any relevant provisions of federal, State or local Laws granting the City rights, authority or control over the Public Rights-of-Way or the activities of Franchisee. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding franchises, fees to be paid or manner of Construction. Nothing in this Franchise shall be deemed to waive, and Franchisee specifically reserves the right to challenge, any City ordinance, regulation or resolution that conflicts with its rights under this Franchise. Nothing in this Franchise shall abrogate the City's right to perform any public works or public improvements of any description.

3.5 Subsequent Action. If the terms of this Franchise are materially altered due to changes in or clarifications governing Law or due to agency rule making or other action, then the Parties shall negotiate in good faith to reconstitute this Franchise in a way consistent with then-applicable Law in a form that, to the maximum extent possible, is consistent with the original scope, intent and purpose of the City and Franchisee and preserves the benefits bargained for by each Party.

3.6 Change in Form of Government. Any change in the form of government of the City shall not affect the validity of this Franchise. Any governmental unit succeeding the City shall, without the consent of Franchisee, succeed to all of the rights and obligations of the City provided in this Franchise except as expressly provided by applicable Laws.

3.7 Order of Precedence.

3.7.1 In the event of a conflict between a provision, term, condition, or requirement of the Edgewood Municipal Code or City ordinances in effect upon the Effective Date and a provision, term, condition, or requirement of this Franchise, the provision, term, condition, or requirement of the Municipal Code or City ordinances shall control to the extent of such conflict.

3.7.2 In the event of a conflict between a provision, term, condition, or requirement of the Municipal Code or City ordinances enacted subsequent to the Effective Date and a provision, term, condition, or requirement of this Franchise, the provision, term, condition, or requirement of the Municipal Code or City ordinances shall control, to the extent of the conflict, subject to Sections 3.3 and 3.4 of this Franchise.

3.8 WSDOT Requirements. To the extent that some Public Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways") and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) requirements in addition to local ordinances and other regulations, the provisions of this subsection 3.8 shall apply, and Franchisee agrees that:

(a) Any pavement trenching and restoration performed by or on behalf of Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(b) Any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) Without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

ARTICLE 4. ACCEPTANCE

4.1 Acceptance. Within thirty (30) days after the passage and approval of this Franchise by the City Council, this Franchise shall be accepted by Franchisee by filing with the City Clerk during regular

business hours, or such other person as may be designated by the City, three originals of this Franchise with its original signed and notarized written acceptance of all of the terms, provisions and conditions of this Franchise in conformance with the Exhibits hereto, together with the following, if required herein:

4.1.1 Payment in readily available funds of the administrative costs for issuance of the Franchise in conformance with the requirements of Section 5.8 herein.

4.1.2 Submission of proof of financial security in accordance with Section 5.4 herein.

4.1.3 Payment of the costs of publication of this Franchise Ordinance in conformance with the requirements of Sections 5.8 and 8.18 herein.

4.1.4 Intentionally deleted.

In the event that the thirtieth day falls on a Saturday, Sunday or legal holiday during which the City is closed for business, the filing date shall fall on the first business day following such Saturday, Sunday or legal holiday.

4.2 Failure to Timely File Acceptance. Except as provided in this Section 4.2 below, the failure of Franchisee to timely file its written acceptance shall be deemed a rejection by Franchisee of this Franchise, and this Franchise shall then be void. In the event that Franchisee timely files its written acceptance but fails to timely comply with the applicable requirements of sections 4.1.1 through 4.1.4, this Franchise shall be voidable in the sole discretion of the Mayor without further action required by the City Council or the consent of Franchisee. The Franchise shall be voidable until such time as Franchisee complies with all of the applicable requirements of sections 4.1.1 through 4.1.4. No opportunity to cure or public hearing is required to void the Franchise pursuant to this Section 4.2 by giving written notice of the same to Franchisee.

4.3 Effective Date; Term.

4.3.1 Effective Date. Except as provided pursuant to Section 4.2 of this Franchise, the Effective Date of this Ordinance and franchise shall be 12:01 a.m. on the 31st day (one month) following passage and approval of this Franchise by the City Council. This Franchise and the rights, privileges, and authority granted hereunder and the contractual relationship established hereby shall take effect and be in force from and after the Effective Date of this Ordinance for the Franchise Term (defined below).

4.3.2 Term. The term of this Franchise shall commence on the Effective Date and shall continue in full force and effect for a period of Five (5) years ("Initial Term"), unless sooner terminated, revoked or rendered void. No more than 180 days prior to expiration, the Parties may mutually agree in writing to extend the term of this Franchise for an additional five year term upon the same terms and conditions as provided herein and in accordance with then-applicable Laws ("Extension Term"). The Mayor is authorized to execute such an extension on behalf of the City without further action or approval by the City Council. The Initial Term and any Extension Term shall be defined collectively as the "Franchise Term."

4.4 Effect of Acceptance. By accepting the Franchise, Franchisee:

4.4.1 Accepts and agrees to comply with and abide by all of the terms and conditions of this Franchise;

4.4.2 Acknowledges and accepts the City's legal right to grant this Franchise;

4.4.3 Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable Law and that it will not raise any claim to the contrary.

4.4.4 Agrees that it enters into this Franchise freely and voluntarily, without any duress or coercion, after free and full negotiations, after carefully reviewing all of the provisions, conditions and terms of this Franchise, and after consulting with counsel;

4.4.5 Acknowledges and agrees that it has carefully read the terms and conditions of this Franchise; it unconditionally accepts all of the terms and conditions of this Franchise; it unconditionally agrees to abide by the same; it has relied upon its own investigation of all relevant facts; it was not induced to accept this Franchise; and, that this Franchise represents the entire agreement between Franchisee and the City.

4.4.6 Warrants that Franchisee has full right and authority to enter into and accept this Franchise in accordance with the terms hereof, and by entering into or performing this Franchise, Franchisee is not in violation of its charter or by-laws, or any law, regulation, or agreement by which it is bound or to which it is subject.

4.4.7 Warrants that acceptance of this Franchise by Franchisee has been duly authorized by all requisite Board action, that the signatories for Franchisee hereto are authorized to sign the Franchise acceptance, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Franchise.

4.5 Effect of Expiration/Termination. Upon expiration or termination of the Franchise without renewal, extension or other authorization, Franchisee shall no longer be authorized to operate the Facilities within the Franchise Area and shall, to the extent it may lawfully do so, cease operation of the Facilities. Forthwith thereafter, except as provided in this Section, Franchisee shall, at Franchisee's sole expense: (1) within ninety (90) days after the expiration or termination of the Franchise, remove its structures or property from the Public Rights-of-Ways and restore the Public Right-of-Way where such removal has occurred to such condition as the City may reasonably require (except that in no event in a condition better than the condition existing immediately prior to the removal of Franchisee's Facilities); (2) sell its Facilities to another entity authorized to operate Facilities within the Franchise Area (which may include the City) upon City approval, which approval shall be provided to Franchisee in writing, to the extent the City may lawfully require its approval; or (3) abandon any Facilities in place in the Public Rights-of-Way upon written notice to the City of Franchisee's intent to so do. If, within ninety (90) days of the City's receipt of Franchisee's notice of abandonment, the City reasonably determines that the safety, appearance, or use of the Public Rights-of-Way would be adversely affected, then City shall provide Franchisee with written notice of such determination ("Determination Notice") and the Facilities must be removed by the Franchisee by a date reasonably specified by the City in the Determination Notice in light of the amount of work to be performed (but in no event less than ninety (90) days after

Franchisee's receipt of the Determination Notice). In the event of failure by Franchisee properly to perform such work, then the City may, after thirty (30) days written notice to Franchisee, perform the work and collect the actual and reasonable costs thereof from Franchisee.

ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC

5.1 Limitation of Liability

5.1.1 Indemnity/Defense. To the fullest extent permitted by law, Franchisee shall fully indemnify, defend, and hold harmless the City and City's successors, assigns, legal representatives, officers (elected or appointed), employees, and agents (collectively, "Indemnitees") for, from, and against any and all third party claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorney's fees, and costs of investigation, removal and remediation, and governmental oversight costs), environmental or otherwise (collectively "Liabilities") of any nature, kind, or description, of any person or entity, directly or indirectly arising out of (in whole or in part):

5.1.1.1 Intentionally deleted;

5.1.1.2 Intentionally deleted;

5.1.1.3 Franchisee's occupation and use of the Public Right-of-Way;

5.1.1.4 Franchisee's operation of the Facilities;

5.1.1.5 The presence of the Facilities within the Public Right-of-Way;

5.1.1.6 The environmental condition and status of the Public Right-of-Way caused by or contributed to, in whole or in part, by Franchisee or its contractors, employees, or agents; and

5.1.1.7 Any negligent act or omission of Franchisee or Franchisee's contractors, agents, or employees in connection with work in the Public Right-of-Way.

This covenant of indemnification shall include, but not be limited by this reference, to Liabilities arising, as a result of the negligent acts or omissions of Franchisee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public Right-of-Way or other public place in performance of work or services permitted under this Franchise.

This covenant of indemnification shall specifically include, without limitation, claims for delay, damages, costs and/or time asserted by any contractor performing public work for or on behalf of the City to the extent such matters are caused by or result from the negligent acts or omissions of Franchisee under this Franchise.

The fact that Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Franchisee's duties of defense and indemnification under this Section 5.1.

Notwithstanding anything to the contrary contained herein, the terms of this section shall not require Franchisee to protect, release, indemnify, defend, and hold harmless the City and City's Indemnitees from any Liabilities to the extent caused by or arising out of the negligence or willful misconduct of City or City's Indemnitees, and provided further that if the Liabilities are caused by or result from the concurrent negligence of (a) the Franchisee or its agents, employees or contractors and (b) City or its Indemnitees, this Section with respect to Liabilities based upon such concurrent negligence shall be valid and enforceable only to the extent of the negligence of the Franchisee or its agents, employees or contractors and only to the extent allowed by Law and except as limited in this Franchise.

If a court of competent jurisdiction determines that this Franchise is subject to the provisions of RCW 4.23.115, the Parties agree that the indemnity provision hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

5.1.2 Tender of Defense. Upon written notice from the City, Franchisee agrees to assume the defense of any lawsuit, claim or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Franchise for which Franchisee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. City's failure to notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. Franchisee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Further, said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend and may participate in the defense of a claim and, in any event, Franchisee may not agree to any settlement of claims financially affecting the City without the City's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. If separate representation to fully protect the interests of both Parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, Franchisee shall select additional counsel with no conflict with the City.

5.1.3 Refusal to Accept Tender. In the event Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the Parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, then Franchisee shall pay all of the City's reasonable and actual costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

5.1.4 Title 51 Waiver. Franchisee waives immunity under RCW Title 51 relating solely to indemnity claims made by the City directly against Franchisee for claims made against the City by Franchisee's employees and affirms that the City and the Franchisee have specifically negotiated this provision, as required by RCW 4.24.115, to the extent it may apply.

5.1.5 Inspection. Inspection or acceptance by the City of any Work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification.

5.2 Compliance with all Applicable Laws. Each party agrees to comply with all applicable Laws except that Franchisee shall not be required to comply with future changes in land use laws existing non-conforming uses and other changes to laws that do not apply to previously-constructed real estate improvements and/or wireless communications facilities.

5.3 Insurance Requirements. See Attached Exhibit “C”.

5.4 Financial Security. See Attached Exhibit “D”.

5.5 Intentionally omitted.

5.6 Contractors/Subcontractors. Franchisee’s contractors and subcontractors performing Work in the Public Rights-of-Way shall comply fully with such bond, indemnity and insurance requirements as may be required by City code or regulations, or other applicable Law. If no such requirements are set forth in the City code or regulations, Franchisee’s contractors and subcontractors shall comply with the requirements set forth in attached Exhibit “E”.

5.7 Liens. In the event that any City property becomes subject to any claims for mechanics’ or materialmen’s liens, which Franchisee does not contest in good faith, Franchisee shall promptly, and in any event within thirty (30) days, cause such lien claim to be discharged or released of record (by payment, posting of bond, court deposit, or other means), without cost to the City, and shall indemnify the City against all costs and expenses (including attorneys’ fees) incurred in discharging and releasing such claim of lien. If any such claim is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Franchisee after first giving Franchisee thirty (30) days’ advance notice of its intention to do so. Nothing herein shall preclude Franchisee’s or the City’s contest of a claim for lien chargeable to or through Franchisee or the City, or of a contract or action upon which the same arose.

5.8 Financial Conditions.

5.8.1 Franchise Fees. Intentionally deleted.

5.8.2 Reimbursement of Direct Costs of Issuance, Renewal, Amendment and Administration. Franchisee shall fully reimburse the City for the City’s reasonable Direct Costs (including attorney’s fees) relating to the issuance, renewal, amendment (if requested by or for the benefit of the Franchisee) and administration of this Franchise.

5.8.3 Reimbursement of Direct Costs of Design Review and Inspection. City approvals and inspections, as provided for in this Franchise, are for the sole purpose of protecting the City’s rights as the owner or manager of the Public Rights-of-Way and are separate and distinct from the approvals and inspections and fees that may be required pursuant to a Regulatory Permit. Therefore, Franchisee

shall fully reimburse to the City, its reasonable Direct Costs of approvals and inspections, to the extent that such Direct Costs are not included in the costs for issuance of and compliance with the Regulatory Permit. Approvals and inspection, by way of example and not limitation, include review of design documents and inspection for compliance with Standards and 100% Design Submittal.

5.8.4 Reimbursement of Direct Costs of Altering Public Rights-of-Way. Franchisee shall fully reimburse the City for the reasonable Direct Costs incurred by the City in planning, designing, constructing, installing, repairing or altering any City infrastructure, structure, or facility as the result of the actual or proposed presence in the Public Right-of-Way of Franchisee's Facilities. Such costs and expenses shall include, but not be limited to, the Direct Costs of City personnel and contractors utilized to oversee or engage in any work in the Public Right-of-Way as the result of the presence of Franchisee's Facilities in the Right-of-Way, and any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any public utilities or Public Rights-of-Way so as not to interfere with Franchisee's Facilities. Upon request as a condition of payment by Franchisee, all billing will be itemized so as to specifically identify the Direct Costs for each project for which the City claims reimbursement. A reasonable charge for the actual cost incurred in preparing the billing may also be included in said billing.

5.8.5 Franchisee Responsibility for Costs. Except as expressly provided otherwise in this Franchise, any act that Franchisee, its contractors or subcontractors are required to perform under this Franchise shall be performed at their sole cost and expense.

5.8.6 Franchisee Work Performed by the City. Any work performed by the City that Franchisee has failed to perform as required pursuant to this Franchise and which is performed by the City in accordance with the terms of this Franchise Ordinance, shall be performed at the cost and expense of the Franchisee. Franchisee shall be obligated to pay the reasonable Direct Costs to the City of performing such work.

5.8.7 Costs to be Borne by Franchisee. Franchisee shall fully reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, contemporaneous with its acceptance of this Franchise.

5.8.8 Taxes and Fees. Nothing contained in this Franchise shall exempt Franchisee from Franchisee's obligation to pay any lawful utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on Franchisee. Any lawful fees, charges and/or fines provided for in the Edgewood Municipal Code or any other City ordinance, and any compensation charged and paid for the Public Rights-of-Way, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from Franchisee.

5.8.9 Itemized Invoice. Upon request and as a condition of payment by the Franchisee of Direct Costs payable by Franchisee under this Franchise, City shall submit an itemized billing so as to specifically identify the Direct Costs incurred by the City for each project for which the City claims reimbursement.

5.8.10 Time for Payment. All non-contested amounts owing shall be due and paid within thirty (30) days of receipt of invoice; provided that, in the event that an itemized invoice is not provided at the time of receipt of invoice and the City receives a request from Franchisee for an itemized invoice within 30 days of receipt of invoice, such amounts shall be due and paid within thirty (30) days of receipt of the itemized invoice.

5.8.11 Overdue Payments. Any amounts payable under this Franchise by Franchisee which shall not be paid upon the due date thereof, shall bear interest at the rate set forth in RCW 19.52.020, which as of the Effective Date is twelve percent (12%) per annum from the date that such payment is due.

5.8.12 Contesting charges. Franchisee may contest all or parts of amounts owed within thirty (30) days of receipt of any invoice. The City will investigate Franchisee's contest and will make appropriate adjustments to the invoice, if necessary, and resubmit the invoice to Franchisee. Franchisee shall pay any amounts owing as itemized in the resubmitted invoice which amounts shall be due within thirty (30) days of receipt of the resubmitted invoice. However, Franchisee does not waive its rights to further dispute resolution processes pursuant to Section 6.1 of this Franchise. Submittal of a dispute over amounts owing pursuant to Section 6.1 does not relieve Franchisee of its obligation to pay amounts due under the resubmitted invoice.

5.8.13 Receivables. Either Party hereto may assign any monetary receivables due them under this Franchise; provided, however, such transfer shall not relieve the assignor of any of its rights or obligations under this Franchise.

ARTICLE 6. ENFORCEMENT AND REMEDIES.

6.1 Dispute Avoidance/Mediation.

6.1.1 Communication and Discussion. The Parties are fully committed to working with each other throughout the Franchise Term and agree to communicate regularly with each other at all times so as to avoid or minimize Disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a Dispute. The Parties each commit to resolving a Dispute in an amicable, professional and expeditious manner.

6.1.2 Representatives. If a Dispute cannot be resolved through discussions by each Party's representative, upon the request of either Party, each Party shall each designate a senior representative ("Senior Representative"), and the Senior Representatives for the Parties shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve the Dispute. Prior to any meetings between the Senior Representatives, the Parties will exchange relevant information that will assist the Parties in resolving the dispute.

6.1.3 Mediation. If the Parties are unable to resolve the dispute under the procedure set forth in this Section, the Parties hereby agree that the matter may, at the mutual discretion of the Parties, be referred to mediation. Either Party may request mediation upon a determination by that Party that the Parties are unable to resolve the Dispute pursuant to Section 6.1.2 herein. The Parties shall thereupon mutually agree upon a mediator to assist them in resolving their differences. If the Parties are unable to agree upon a mediator, the Parties shall jointly obtain a list of seven (7) mediators from a reputable

dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a Party fails to notify the other Party of which mediator it has stricken within two (2) business days, the other Party shall have the option of selecting the mediator from those mediators remaining on the list. Unless the Parties agree otherwise, mediation shall commence in no case later than thirty (30) days after a mediator is selected. Any expenses incidental to mediation shall be borne equally by the Parties. Nothing herein shall be construed as requiring mediation as a prerequisite to litigation or other method of Dispute Resolution.

6.1.4 Intent. The obligations of this Section 6.1 are not intended and shall not be construed to prevent a Party from, assessing liquidated damages, issuing an order to cure an alleged Non-Material Breach, or taking Corrective Action.

6.2 Remedies. The Parties have the right to seek any and all of the following remedies, singly or in combination, in the event of Material Breach:

6.2.1 Specific Performance. Each Party shall be entitled to specific performance of each and every obligation of the other Party under this Permit without any requirement to prove or establish that such Party does not have an adequate remedy at law. The Parties hereby waive the requirement of any such proof and acknowledge that either Party would not have an adequate remedy at law for the commission of an event of default or Breach hereunder.

6.2.2 Injunction. Each Party shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of an event of default or Breach and to obtain a judgment or order specifically prohibiting a violation or breach of this Franchise without, in either case, being required to prove or establish that such Party does not have an adequate remedy at law. The Parties hereby waive the requirement of any such proof and acknowledge that the other Party would not have an adequate remedy at law for the commission of an event of default or Breach hereunder.

6.2.3 Alternative Remedies. Except as otherwise provided herein, neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the either Party to commence an action for equitable or other relief, and/or proceed against the other Party and any guarantor for all direct monetary damages, costs and expenses arising from the default or Breach and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

6.2.4 Damages. Except as otherwise provided or limited herein, (i) seek equitable relief, and/or (ii) commence an action at law for monetary damages or impose liquidated damages as set forth below. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Franchise shall be deemed to bar either Party from seeking appropriate judicial relief. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either Party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law.

6.3 Right to Cure Breach.

6.3.1 Notice. If a Party believes that the other Party is in Non-Material Breach, such Party shall give written notice to the Noticed Party stating with reasonable specificity the nature of the alleged non-material Breach. The Noticed Party shall have thirty (30) days, or such lesser or greater time as specified in the notice, from the receipt of such notice to:

6.3.1.1 Respond to the other Party, contesting that Party's assertion that a Breach has occurred, and request a meeting in accordance with Section 6.1; or

6.3.1.2 Cure the Breach; or

6.3.1.3 Notify the other Party that the Noticed Party cannot cure the Breach within the time provided in the notice, because of the nature of the Breach. In the event the Breach cannot be cured within time provided in the notice, the Noticed Party shall promptly take all reasonable steps to cure the Breach and notify the other Party in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the other Party may set a meeting to determine whether additional time beyond the time provided in the notice is indeed needed, and whether the Noticed Party's proposed completion schedule and steps are reasonable.

6.3.2 Communication. If the Noticed Party does not cure the alleged Non-Material Breach within the cure period stated above, or denies the alleged Non-Material Breach the Parties shall meet in accordance with Section 6.1 to attempt to resolve the Dispute.

6.3.3 Time to Cure. When specifying the time period for cure, the Party giving notice shall take into account, the nature and scope of the alleged Breach, the nature and scope of the work required to cure the Breach, whether the Breach has created or will allow to continue an unsafe condition, the extent to which delay in implementing a cure will result in adverse financial consequences or other harm to the Party giving notice, and whether delay in implement a cure will result in a violation of Law or breach of contract.

6.3.4 Failure to Cure. If the Noticed Party fails to promptly commence and diligently pursue cure of a Non-Material Breach to completion to the reasonable satisfaction of the Party giving notice and in accordance with the agreed upon time line or the time provided for in the Notice of Breach, then the Non-Material Breach shall become a Material Breach.

6.4 Material Breach. In the event of a Material Breach, no opportunity to cure shall be required before taking Legal Action to remedy the Material Breach created as a result of the failure to cure.

6.5 Termination/Revocation. In addition to the remedies available to the City as provided at Law, in equity or in this Franchise, upon a Material Breach, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in accordance with the following:

6.5.1 Notice. Prior to termination of the Franchise, the City shall give written notice to the Franchisee of its intent to revoke the Franchise and request a meeting and commence dispute resolution pursuant to Section 6.1 of this Franchise. The notice shall set forth the exact nature of the Material Breach.

If Franchisee objects to such termination, Franchisee shall object in writing and state its reasons for such objection and provide any explanation. If the Material Breach has arisen as a result of a failure to cure a Non-Material Breach, and the Parties have previously mediated the dispute pursuant to Section 6.1 herein, the Parties are not obligated to utilize the dispute resolution process before proceeding to a public hearing as provided as 6.5.2 herein.

6.5.2 Hearing. In the event the City is unable to resolve the Dispute as to the Material Breach to the satisfaction of the City pursuant to Section 6.1 herein, the City may then seek a termination/revocation of the Franchise in accordance with this Subsection.

6.5.2.1 The City Council, or its designee, shall conduct a public hearing to determine if termination/revocation of the Franchise is warranted.

6.5.2.2 At least fourteen (14) days prior to the public hearing, the City shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the Hearing Body/Officer shall hear any Persons interested therein; and provide that the Franchisee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

6.5.2.3 Within sixty (60) days after the close of the hearing, the City Council shall issue a written decision regarding the termination/revocation of the Franchise. If the City Council has designated another hearing body/officer to conduct the public hearing, such hearing body/officer shall make a recommendation to the City Council within thirty (30) days following the close of the public hearing, and the City Council shall make a decision upon the recommendation of the Hearing Body/Officer after a closed record hearing and within sixty (60) days following receipt of the recommendation of the Hearing Body/Officer. The decision of the City Council shall be final. The Parties recognize that a decision to terminate/revoke a Franchise is not a land use decision that is subject to appeal pursuant to the Land Use Petition Act (Chapter 36.70C RCW). Failure to render a decision within the required time period shall not be a basis for invalidation of the decision that is made.

6.5.3 Decision to Terminate. The City may consider the following when determining whether or not to terminate/revoke the Franchise based upon the Material Breach:

6.5.3.1 The history of non-compliance by Franchisee with material terms and conditions of this Franchise;

6.5.3.2 Whether other remedies will achieve compliance with this Franchise;

6.5.3.3 Whether Franchisee has acted in good faith;

6.5.3.4 Whether the acts or omissions that gave rise to the Material Breach were willful or indifferent to the requirements that gave rise to the Material Breach;

6.5.3.5 The impact or potential impact of the Material Breach upon the public health, safety and welfare;

6.5.3.6 The economic risk the City is exposed to as a result of the Material Breach;

6.5.3.7 Whether consent, permission, adjudication, an order or other authorization of a governmental agency or body, is required as a condition precedent to the City ordering Franchisee to abandon or remove Facilities from the Public Rights-of-Way or to cease operations (temporarily or otherwise) of the Facilities.

6.5.3.8 Such other facts and circumstances that are relevant to the controversy that gave rise to the Material Breach and/or to whether or not the continued presence and operation of Franchisee's Facilities within the Franchise Area will be harmful to the public health, safety or welfare.

6.6 Assessment of Liquidated Damages.

6.6.1 Because it may be difficult to ascertain or quantify the harm to the City in the event of a Breach of this Franchise by Franchisee, the Parties agree to liquidated damages as a reasonable estimation of the actual economic losses resulting from Franchisee's Breach of those provisions of this Franchise set forth as Section 6.6.7 herein, and not as a penalty. To the extent that the City elects to assess liquidated damages as provided in this Franchise, such damages shall be the City's sole and exclusive remedy for recovery of compensatory damages resulting from such Breach and shall not exceed a time period of one hundred eighty (180) days. Nothing in this subsection is intended to preclude the City from exercising any other right or remedy with respect to a Breach that continues past the time the City stops assessing liquidated damages for such breach.

6.6.2 Prior to assessing any liquidated damages, the City shall follow the procedures set forth in this Franchise that provide the Franchisee proper notice and a right to cure when applicable.

6.6.3 With the exception of failure to comply with a stop work order pursuant to Section 7.5.7 herein, the City shall not assess any liquidated damages if Franchisee has cured or commenced to and completes the cure under the enforcement provisions of Article 6 of this Franchise. In the event Franchisee fails to cure, the City may assess liquidated damages and shall inform Franchisee in writing of the assessment. Franchisee shall have thirty (30) days to pay the damages. The City may immediately begin assessing liquidated damages upon issuance of a stop work order in the event that Franchisee, or its contractors or subcontractors, fails to comply with such stop work order.

6.6.4 The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day that Franchisee received the notice of Breach.

6.6.5 Franchisee may appeal (by pursuing Legal Action) any assessment of liquidated damages upon paying the assessment and shall not be required to comply with the provisions of Section 6.1.

6.6.6 The liquidated damages amount shall be automatically adjusted every five years from the date of execution of this Franchise, to reflect the extent of cumulative inflation.

6.6.7 Pursuant to the requirements outlined herein, liquidated damages shall not exceed the following amounts: one hundred dollars (\$100.00) per day for failure to comply with the requirements of the following Sections: 4.5 (Expiration/Termination), 5.3 (Insurance), 5.4 (Financial Security); 7.5.3 (Work Subject to Inspection); 7.7.2 (Facilities Subject to Inspection); five hundred dollars (\$500) per day for the first two days for failure to comply with the requirements of 7.5.7 (Stop Work Order), and one thousand dollars (\$1,000) per day for each day thereafter; and one hundred dollars (\$100.00) per day for any material breaches or defaults not previously listed.

6.6.8 The City may not collect both liquidated damages and actual damages for the same violation.

Franchisee shall not be: (1) obligated to pay these liquidated damages; or (2) held to violation if the noncompliance is “beyond the control” of Franchisee as that term is defined in Section 8.15 herein.

6.7 Receivership. At the option of the City, subject to applicable law and lawful orders of courts of jurisdiction, this Franchise may be revoked after the appointment of a receiver or trustee to take over and conduct the business of Franchisee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

6.7.1 The receivership or trusteeship is timely vacated; or

6.7.2 The receiver or trustee has timely and fully complied with all the terms and provisions of this Franchise, and has remedied all defaults under the Franchise. Additionally, the receiver or trustee shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver or trustee assumes and agrees to be bound by each and every term, provision and limitation of this Franchise.

ARTICLE 7. CONDITIONS UPON USE OF PUBLIC RIGHTS-OF-WAY

7.1 Permits.

7.1.1 Regulatory Permit. If Franchisee has submitted an application for a Regulatory Permit to perform work in the Public Right-of-Way, the City shall, to the extent practicable and consistent with applicable Laws, consider such application contemporaneously with the design review requirements hereunder.

7.1.2 Development Permit(s). In the event that, as a condition of applying for a Development Permit or a variance for Work within the Public Right-of-Way, Franchisee must have authorization from the City (as the owner/manager of the property to be developed) to apply for such Development Permit, the general franchise grant given herein shall, as to the proposed Franchise Area, constitute any such consent or authorization of the City that is necessary for such application. This authorization is not intended to and does not operate to waive the requirement for Franchisee to apply for and obtain all applicable Regulatory Permits prior to commencement of Work within the Franchise Area nor shall such consent or authorization be deemed to be consent to or approval of the governmental action being sought. This authorization/consent is intended solely to allow Franchisee to seek any required

Development Permit(s), approvals, or variance prior to or contemporaneous with its application for a Regulatory Permit.

7.2 Submission/Approval of Design Submittal.

7.2.1 Submission. At the time of application for a Regulatory Permit, or in the event that Franchisee seeks to alter or change the location of the Facilities in a Franchise Area, Franchisee shall provide the City with 100% Design Submittal for review and approval of any Facility construction, alteration or change of location within the proposed Franchise Area.

7.2.2 Use of Public Rights-of-Way. Within parameters reasonably related to the City's role in protecting the public health, safety and welfare and except as may be otherwise preempted by Law, the City may require that Facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a the proposed Franchise Area and may deny access if Franchisee is not willing to comply with such requirements; and, may remove, or require removal of, any Facility that is not installed in compliance with the requirements established by the City or which is installed without prior City approval of the time, place, or manner of installation.

7.2.3 Approval of Plans. Work may not commence without prior approval by the City, which approval shall not be unreasonably withheld, conditioned or delayed, of the 100% Design Submittal submitted by Franchisee. The City may review and approve the Franchisee's 100% Design Documents with respect to:

7.2.3.1 Location/Alignment/Depth;

7.2.3.2 The manner in which the Facility is to be installed;

7.2.3.3 Measures to be taken to preserve safe and free flow of traffic;

7.2.3.4 Structural integrity, functionality, appearance, compatibility with and impact upon roadways, bridges, sidewalks, planting strips, signals, traffic control signs, intersections, or other facilities and structures in the Public Right-of-Way;

7.2.3.5 Ease of future road maintenance, and appearance of the roadway;

7.2.3.6 Compliance with applicable Standards and codes including temporary erosion control measures and stormwater compliance; and

7.2.3.7 Compliance and compatibility with the City's six-year transportation plan, capital improvements plan, and regional transportation improvement plans.

7.3 Compliance with Standards/Codes. Except as may be preempted by federal or state Laws, all Facilities shall conform to and all Work shall be performed in compliance with the following "Standards" in effect on the date of the applicable Regulatory Permit:

7.3.1 Road and Bridge Standards. The current and any subsequent edition of the Standard Specifications for Road, Bridge and Municipal Construction as prepared by the Washington State Department of Transportation (“WSDOT”) and the Washington State Chapter of American Public Works Association (“APWA”);

7.3.2 MUTCD. The Washington State Department of Transportation Manual of Uniform Traffic Control Devices (“MUTCD”);

7.3.3 Special Conditions. Requirements and standards set forth as special conditions;

7.3.4 City Regulations. City of Edgewood Municipal Code, Ordinances and regulations adopted by the City Council authorize a designated City official to establish standards for placement of Facilities in Public Rights-of-Way, including by way of example and not limitation, the specific location of Facilities in the Public Rights-of-Way. This shall also include any road design standards that the City shall deem necessary to provide adequate protection to the Public Rights-of-Way, its safe operation, appearance and maintenance;

7.3.5 Other Regulatory Requirements. Applicable requirements of federal or state governmental authorities that have regulatory authority over the placement, construction, or design of Franchisee Facilities;

7.3.6 Industry Standards. All Facilities shall be durable and constructed in accordance with good engineering practices and standards promulgated by the government and industry for placement, construction, design, type of materials and operation of Franchisee Facilities;

7.3.7 Safety Codes and Regulations. Franchisee Facilities and Work shall comply with all applicable federal, State and City safety requirements, rules, regulations, Laws and practices. By way of illustration and not limitation, Franchisee shall comply with the National Electrical Safety Code and the Occupational Safety and Health Administration (OSHA) Standards; and

7.3.8 Building Codes. Franchisee Facilities and Work shall comply with all applicable City building codes.

7.4 Conditions Precedent to Work. Except as may be otherwise required by applicable City code, rule, regulation or Standard, Franchisee shall comply with the following as a condition precedent to Work:

7.4.1 Regulatory Permits Required. Prior to performing any Work in the Public Right-of-Way requiring a Regulatory Permit, Franchisee shall apply for, and obtain, in advance, such appropriate Regulatory Permits from the City as are required by Edgewood Municipal Code, ordinance or rule. Franchisee shall pay all generally applicable and lawful fees for the requisite Regulatory Permits.

7.4.2 Compliance with Franchise. Franchisee shall be and remain in material compliance with the Franchise, including by way of example and not limitation, payment of fees invoiced to Franchisee for City reimbursable costs and expenses related to review and approval of the Regulatory Permit, proof of insurance and proof of financial security.

7.5 Work in the Public Rights-of-Way.

7.5.1 Least Interference. Work in the Public Rights-of-Way shall be done in a manner that does not unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property and which causes the least interference with the rights and reasonable convenience of property owners, businesses and residents along the Public Rights-of-Way. Franchisee's Facilities shall be Constructed so as not to disturb or impair the use or operation of any street improvements, utilities, and related facilities of City or City's existing lessees, licensees, Franchisees, easement beneficiaries or lien holders, without prior written consent of City or the Parties whose improvements are interfered with and whose consent is required pursuant to agreements with the City existing prior to the Effective Date. Franchisee's Facilities shall be constructed in such a manner as not to interfere with any planned utilities. For purposes of this Section, "planned" shall mean utilities which the City intends to construct in the future, which intent is evidenced by the inclusion of said utility project in the Capital Improvement Program/Plan, a comprehensive utility plan, a transportation improvement plan, the City's Comprehensive Plan, or other written construction or planning schedule.

7.5.2 Prevent Injury/Safety. All construction Work shall be performed in a manner consistent with high industry standards.

7.5.3 Work Subject to Inspection. The City may observe or inspect the construction Work, or any portion thereof, at any time to ensure compliance with the Utility Franchise, this Franchise, applicable Law, the applicable approved 100% Design Submittal, the Standards, and to ensure the Work is not being performed in an unsafe or dangerous manner.

7.5.4 Publicizing Work.

7.5.4.1 Notice to Private Property Owners. Except in the case of an Emergency, Franchisee shall give reasonable advance notice to private property owners and tenants of construction Work on or adjacent to such private property if the City or Franchisee reasonably anticipates such Work will materially disturb or disrupt the use of such private property.

7.5.4.2 Notice to the Public. Except in the case of an Emergency, Franchisee shall notify the public prior to commencing any significant planned Construction that Franchisee reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

7.5.4.3 Additional Requirements. Work shall be publicized as the City may direct, from time to time, in accordance with written procedures established by the City and on file with the City Clerk. The publication of Work may be used to notify the public and operators of other facilities of the impending work, in order to minimize inconvenience and disruption to the public. The cost of publication shall be borne by Franchisee.

7.5.5 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors performing Work in the Franchise Area shall be licensed and bonded in accordance with the City's and State's applicable regulations and requirements. Any contractors or subcontractors

performing Work within the Public Right-of-Way on behalf of the Franchisee shall be deemed servants and agents of Franchisee for the purposes of this Franchise and are subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all Work performed by its contractors and subcontractors and others performing work on its behalf as if the Work were performed by it, and shall ensure that all such Work is performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractors or other Persons performing Work on Franchisee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the Work performed by them.

7.5.6 Tree Trimming. Franchisee may trim trees upon and overhanging on Public Rights-of Way so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 7.5.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification of the City and at the expense of Franchisee. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth not owned by the City. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Public Works Director or his/her designee.

7.5.7 Emergency Permits. In the event that Emergency repairs are necessary, Franchisee shall immediately notify the Mayor of the need for such repairs. Franchisee may initiate such Emergency repairs, and shall apply for appropriate Regulatory Permits within forty-eight (48) hours after discovery of the Emergency. In the event of an Emergency, a Franchisee may perform Emergency Work in the Public Rights-of-Way without first securing a Regulatory Permit for such Emergency Work, provided that: (1) Franchisee notifies the City in advance of the Emergency requiring the performance of such Emergency Work and the type and location of such Work; (2) Franchisee applies for a Regulatory Permit on the first business day following commencement of such Work; and (3) Franchisee, at its sole cost and expense, makes its Work performed in the Public Rights-of-Way available for inspection to determine compliance with Laws and Standards.

7.5.8 Stop Work. On notice from the City that any Work does not comply with the Franchise, the approved 100% Design Documents for the Work, the Standards, or other applicable Law, or is being performed in an unsafe or dangerous manner as reasonably determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be, in writing, given to the Person doing the work and be posted on the work site, indicate the nature of the alleged violation or unsafe condition; and establish conditions under which work may be resumed. If so ordered, Franchisee shall cease and shall cause its contractors and subcontractors to cease such activity until the City is satisfied that Franchisee is in compliance. If an unsafe condition is found to exist, the City, in addition to

taking any other action permitted under applicable Law, may order Franchisee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City reasonably establishes. The City has the right to inspect, repair and correct the unsafe condition if Franchisee fails to do so, and to reasonably charge Franchisee.

7.5.9 Dedication of City Utilities/Public Improvements. Upon substantial completion of construction of the Facilities and any related restoration of or improvements to or within the Public Rights-of-Way, including without limitation, curbs, gutters, sidewalks, underlayment, roadway surface, pipe, connectors, catch basins, or any part thereof that will be dedicated to City ownership (collectively “Dedicated Improvements”), and upon satisfaction of other applicable conditions of the City and this Franchise, Franchisee shall submit a written request to the City for a final inspection and acceptance of dedication of all Dedicated Improvements. The written request shall certify that the Work is substantially complete. The Work will be deemed to be “substantially complete” when:

7. 5.8.1 Complete record drawings are provided to the City;

7. 5.8.2 Franchisee has completely and accurately identified the Dedicated Improvements within the record drawings;

7. 5.8.3 The Dedicated Improvements are functioning to the satisfaction of the City, and when appropriate, operationally tested;

7. 5.8.4 Franchisee has warranted in writing that the Work is completed in conformance with the 100% Design Documents approved by the City; except for punch list items, which do not substantially prevent the use of the Dedicated Improvements or any component thereof for the purposes intended;

7. 5.8.5 No other acts are necessary to assign ownership of any and all Dedicated Improvements to the City free and clear of all liens and encumbrances;

7. 5.8.6 Franchisee has assigned to the City any and all manufacturer warranties of the Dedicated Improvements, if any; and

7. 5.8.7 Franchisee, or its contractors or subcontractors, warrant the Dedicated Improvements to be free from defects in design, manufacture and construction for a period of one year from the date that such Dedicated Improvements are accepted by the City. This warranty shall not operate to waive, alter or diminish any rights the City may otherwise have under this Franchise, at law, or in equity.

Upon receipt of Franchisee’s request for final inspection and dedication, the City shall within twenty (20) business days thereafter arrange for a final inspection. If the City determines that the Work with regard to the Dedicated Improvements is not substantially complete, it shall promptly provide Franchisee with a written statement indicating in adequate detail in what respects Franchisee has failed to substantially complete the Work or any component thereof or is otherwise in default and what measures or acts will be necessary, in the opinion of the City, for Franchisee to take or perform in order to substantially complete such Work. Upon receipt of such detailed statement from the City, Franchisee

shall undertake to complete the Work, cure the alleged default in a manner responsive to the stated reasons for disapproval, or Franchisee may submit to dispute resolution pursuant to Section 6.1 herein, the issue of whether the City has unreasonably withheld its acceptance.

When the City is satisfied that the Work related to the Dedicated Improvements is substantially complete, it will by ordinance, resolution or other lawful means accept ownership of such Dedicated Improvements and thereafter become responsible for maintenance, repair, and replacement of the same.

7.6 Alterations. Except as may be shown in the 100% Design Submittal approved by City or the record drawings, or as may be necessary to respond to an Emergency, Franchisee, and Franchisee's contractors and subcontractors, may not make any material alterations to the Franchise Area, or permanently affix anything to the Franchise Area, without City's prior written consent. Material alteration shall include by way of example and not limitation, a change in the dimension or height of the above ground Facilities or the addition of or change in configuration of an antenna. If Franchisee desires to change either the location of any Facilities or otherwise materially deviate from the approved design of any of the Facilities, Franchisee shall submit such change to City in writing for its approval pursuant to Section 7.2 of this Franchise. Franchisee shall have no right to commence any such alteration change until after Franchisee has received City's approval of such change in writing.

7.7 General Conditions.

7.7.1 Right-of-Way Meetings. Subject to receiving advance notice, Franchisee will make reasonable efforts to attend and participate in meetings of the City regarding Right-of-Way issues that may impact the Utility System.

7.7.2 Compliance Inspection. Franchisee's Facilities shall be subject to the City's right of periodic inspection upon at least twenty-four (24) hours' notice, or, in case of an emergency, upon demand without prior notice, to determine compliance with the provisions of this Franchise or Regulatory Permit or other applicable Law over which the City has jurisdiction. Franchisee shall respond to reasonable requests for information regarding its Facilities as the City may from time to time issue to determine compliance with this Franchise, including requests for information regarding Franchisee's plans for Construction and the purposes for which the Facility is being constructed.

7.7.3 One Call. If Franchisee places Facilities underground, Franchisee shall, at its own expense, continuously be a member of the State of Washington one number locator service under Chapter 19.122 RCW, or an approved equivalent, and shall comply with all such applicable rules and regulations. Franchisee shall locate and field mark its Facilities for the City at no charge.

7.7.4 Graffiti Removal. Within 48 hours after notice from the City, Franchisee shall remove any graffiti on any part of its Facilities, including, by way of example and not limitation, equipment cabinets. If Franchisee fails to do so, the City may remove the graffiti and bill Franchisee for the cost thereof.

7.7.5 Dangerous Conditions, Authority for City to Abate. Whenever Construction of Facilities has caused or contributed to a condition that appears to substantially impair the lateral support

of the adjoining Public Right-of-Way, street, or public place, or endangers the public, any utilities, or City-owned property, the City may reasonably require Franchisee to take action to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities. Such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if Emergency conditions exist which require immediate action, the City may, to the extent it may lawfully do so, take such actions as are necessary to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and Franchisee shall be liable to the City for the reasonable costs thereof.

7.7.6 No Duty. Notwithstanding the right of City to inspect the Work, issue a stop work order, and order or make repairs or alterations, City has no duty or obligation to observe or inspect, or to halt work on, the applicable Facilities, it being solely Franchisee's responsibility to ensure that the Facilities are Constructed in strict accordance with this Franchise, the approved 100% Design Submittal, the Standards, and applicable Law. Neither the exercise nor the failure by City to exercise any right set forth in this Article 7 shall alter the liability allocation set forth in this Franchise.

7.7.7 Roadside Hazard. All of Franchisee's Facilities shall be kept by Franchisee at all times in a safe and hazard-free condition. Franchisee shall ensure that Facilities within the Public Rights-of-Way do not become or constitute an unacceptable roadside obstacle and do not interfere with or create a hazard to maintenance of and along the Public Rights-of-Way. In such event, or in the event that the City determines that a Facility within the Public Rights-of-Way has become or constitutes an unacceptable roadside obstacle or may interfere with or create a hazard to maintenance of and along the Public Rights-of-Way, Franchisee shall:

7.7.7.1 If the hazard results from disrepair, repair the Facility to a safe condition;

7.7.7.2 Relocate the Facility to another place within the Public Right-of-Way or underground;

7.7.7.3 Convert the Facility to a break-away design;

7.7.7.4 Crash-protect the Facility;

7.7.7.5 Relocate the Facility to another location off the Public Rights-of-Way; or

7.7.7.6 In the event that the Facility is screened from view (i.e., not readily visible from all directions by persons standing at ground level), remove or trim vegetation in and around the Facility.

Franchisee, at all times, shall employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to Franchisee's agents or employees. Franchisee, at its own expense, shall repair, renew, change, and improve its Facilities from time to time as may be necessary to accomplish this purpose. Franchisee shall use

suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such Work in or affecting such Public Rights-of-Way or property. All excavations made by Franchisee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents.

7.7.8 Verification of Alignment/Depth. Upon the reasonable request and prior written notice, in non-Emergency situations at least thirty (30) days' notice by the City and in order to facilitate the location, alignment and design of Public Improvements, Franchisee agrees to locate, and if reasonably determined necessary by the City, to excavate and expose portions of its Facilities for inspection so that the location of same may be taken into account in the improvement design, PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless Franchisee's record drawings and maps of its Facilities submitted pursuant to Section 7.11 of this Franchise are reasonably determined by the City to be inadequate for purposes of this paragraph.

7.8 Facility Relocation at Request of the City.

7.8.1 Public Project. The City may require Franchisee to alter, adjust, re-attach, secure, relocate, or protect in place its Facilities within the Public Right-of-Way when necessary in the City's reasonable discretion for construction, alteration, repair, or improvement of any portion of the Public Rights-of-Way for purposes of public welfare, health, or safety ("Public Improvements"). Such Public Improvements include, by way of example but not limitation, Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, communication lines, or any other type of government-owned communications, utility or public transportation systems, public work, public facility, or improvement of any government-owned utility; Public Rights-of-Way vacation, and the Construction of any public improvement or structure by any governmental agency acting in a governmental capacity.

7.8.2 Alternatives. If the City requires Franchisee to relocate its facilities located within the Public Rights-of-Way, the City shall make a reasonable effort to provide Franchisee with an alternate location within the Public Rights-of-Way. Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise Franchisee in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Franchisee full and fair consideration, subject to RCW 35.99.060, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines, in its reasonable discretion, that there is no other reasonable alternative, the Franchisee shall promptly relocate its Facilities as otherwise provided in this Section at Franchisee's sole expense. In the event that the City reasonably determines that it does not have available resources to evaluate Franchisee's proposal, the City shall not be obligated to further consider such proposal unless and until Franchisee funds the additional costs to the City to complete its evaluation. Franchisee shall in all cases have the privilege to temporarily bypass, in the authorized portion of the Public Right-of-Way upon approval by the City, any section of the Facility required to be temporarily disconnected or removed.

7.8.3 Intentionally omitted.

7.8.4 Notice. The City shall notify Franchisee as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of Emergency such notice shall be no less than ninety (90) days, or such longer period as mutually agreed to by the parties. In calculating the date that relocation must be completed, City shall consult with Franchisee and consider the extent of Facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the date specified, unless the City, or a reviewing court, establishes a later date for completion, after a showing by Franchisee that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

7.8.5 Coordination of Work. Franchisee acknowledges and understands that any delay by Franchisee in performing the work to alter, adjust, re-attach, secure, relocate, or protect in place its Facilities within the Public Rights-of-Way may delay, hinder, or interfere with the work performed by the City and its contractors and subcontractors in furtherance of construction, alteration, repair, or improvement of the Public Rights-of-Way, and result in damage to the City, including but not limited to, delay claims. Franchisee shall cooperate with the City and its contractors and subcontractors to coordinate such Franchisee Work to accommodate the public improvement project and project schedules to avoid delay, hindrance of, or interference with such project.

7.8.6 Failure to Comply. Should Franchisee fail to alter, adjust, re-attach, secure, protect in place or relocate any Facilities ordered by the City to be altered, adjusted, re-attached, secured, protected in place, or relocated, within the time prescribed by the City, given the nature and extent of the work, or if it is not done to the City's reasonable satisfaction, then after providing Franchisee thirty (30) days' notice and Franchisee's continued failure to cure within the thirty (30) day period, the City may, to the extent the City may lawfully do so, cause such work to be done and bill the reasonable cost of the work to Franchisee, including all reasonable costs and expenses incurred by the City due to Franchisee's delay. In such event, the City shall not be liable for any damage to any portion of Franchisee's Facilities, except to the extent damage is caused by the negligence or wilful misconduct of City or its Indemnitees. In addition to any other indemnity set forth in this Franchise, Franchisee will indemnify, hold harmless, and pay the costs of defending the City, from and against any and all claims, suits, actions, damages, or liabilities for delays on Public Improvement construction projects caused by or arising out of the failure of Franchisee to adjust, re-attach, secure, modify, protect in place, or relocate its Facilities in a timely manner; provided that, Franchisee shall not be responsible for damages due to delays to the extent caused by the City or its Indemnitees.

7.8.7 Assignment of Rights. In addition to any other rights of assignment the City may have, the City may from time to time assign or transfer to its contractors or subcontractors its rights under Sections 7.8 or 7.10 of this Franchise to require Franchisee to alter, adjust, re-attach, secure, relocate, or protect in place its Facilities within the Public Right-of-Way. Franchisee acknowledges and consents to such an assignment(s)/transfer(s) and agrees that it is bound by all lawful orders issued by such assignee(s) of the City under color of authority of such assignment(s)/transfer(s) as though such orders had been issued by the City under the terms and conditions of this Franchise. Such assignment/transfer is an assignment/transfer of the City's contract rights under this Franchise and shall not in any way be interpreted

or construed as an assignment, transfer, delegation or relinquishment of the City's rights under its police powers to require Franchisee to alter, adjust, re-attach, secure, relocate, or protect in place its Facilities within the Public Right-of-Way.

7.8.8 Reimbursement for Costs. Notwithstanding the cost allocation provisions set forth in this Franchise, Franchisee does not waive its right(s) to and shall be entitled to seek reimbursement of its relocation costs as may be otherwise specifically set forth and authorized in RCW 35.99.060.

7.9 Movement of Facilities for Others.

7.9.1 Private Benefit. If any alteration, adjustment, re-attachment, securitization, temporary relocation, or protection in place of the Facility is required solely to accommodate the Construction of facilities or equipment that are not part of a Public Improvement project, Franchisee shall, after at least ninety (90) days advance written notice, take action to effect the necessary changes requested by the responsible entity; provided that, (a) the Party requesting the same pays for Franchisee's time and material costs associated with the requested work; (b) the alteration, adjustment, re-attachment, securitization, relocation or protection in place is reasonably necessary to accommodate such work; (c) the Person requesting the alteration, adjustment, re-attachment, securitization, relocation, or protection in place considers alternatives in the same manner as provided at Section 7.8.2; and (d) such alteration, adjustment, re-attachment, securitization or relocation is not requested for the purpose of obtaining a competitive advantage over Franchisee.

7.9.2 Temporary Changes for Other Franchisees. At the request of any Person holding a valid permit and upon reasonable advance notice, Franchisee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder. Franchisee shall be given not less than thirty (30) days' advance notice to arrange for such temporary wire changes.

7.10 Movement of Facilities During Emergencies.

7.10.1 Immediate Threat. In the event of an unforeseen event, condition or circumstance that creates an immediate threat to the public safety, health, or welfare, the City shall have the right to require Franchisee to temporarily shut down, relocate, remove, replace, modify, re-attach, secure or disconnect Franchisee's Facilities located in the Public Rights-of-Way at the expense of Franchisee without regard to the cause or causes of the immediate threat.

7.10.2 Emergency. In the event of an Emergency where a Facility creates or is contributing to an imminent danger to health, safety, or property, the City retains the right and privilege to protect, support, or temporarily disconnect, remove, re-attach, secure, or relocate any or all parts of the Facilities located within the Public Rights-of-Way, as the City may determine to be necessary, appropriate or useful in response to any public health or safety Emergency and charge Franchisee for costs incurred.

7.10.3 Notice. During Emergencies the City shall endeavor to, as soon as practicable, provide notice to Franchisee of such Emergency at a designated Emergency response contact number, to

allow Franchisee the opportunity to respond and rectify the problem without disrupting Service. If after providing notice, there is no immediate response, the City may protect, support, or temporarily disconnect, remove, or relocate any or all parts of the Facilities located within the Public Rights-of-Way.

7.10.4 Limitation on Liability. The City shall not be liable for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section except to the extent caused by the negligence or willful misconduct of the City or its Indemnitees.

7.11 Record of Installations

7.11.1 Map/Record Drawing of Facilities. Upon request by the City, Franchisee shall search for and provide the City with the most accurate and available maps and record drawings in a form and content prescribed by the City reflecting the horizontal and vertical location and configuration of its Facilities within the Public Rights-of-Way in a format acceptable to the City. Franchisee shall provide the City with updated record drawings and maps upon request. As to any such record drawings and maps so provided, Franchisee does not warrant the accuracy thereof and to the extent the location of the Facilities are shown, such Facilities are shown in their approximate location.

7.11.2 Intentionally Deleted.

7.11.3 Maps/Record Drawings of Improvements. After Construction involving the locating or relocating of Facilities, the Franchisee shall provide the City with accurate copies of all record drawings and maps showing the horizontal and vertical location and configuration of all of located or relocated Facilities within the Public Rights-of-Way. These record-drawings and maps shall be provided at no cost to the City, and shall include hard copies and digital copies in a format reasonably acceptable to the City. As to any such record drawings and maps so provided, Franchisee does not warrant the accuracy thereof and to the extent the location of the Facilities are shown, such Facilities are shown in their approximate location.

7.11.4 Confidentiality. Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to keep confidential any proprietary or confidential documents, books or records to the extent permitted by Law. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary. In the event that the City receives a public records request under RCW 42.56 or similar Law for the disclosure of information Franchisee has designated as confidential, trade secret or proprietary, the City shall promptly provide notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 7.11.4 prohibits the City from complying with RCW 42.56, or any other applicable Law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any Law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee which prohibits the disclosure of any such confidential records.

7.12 Restoration of Public Rights-of-Way, Public and Private Property

7.12.1 Restoration after Construction. Franchisee shall, after completion of Construction of any part of its Facility, leave the Public Rights-of-Way and other property disturbed thereby, in as good or better condition in all respects as it was in before the commencement of such Construction. Franchisee agrees to promptly complete restoration work to the reasonable satisfaction of the City and in accordance with all Regulatory Permit conditions.

7.12.2 Notice. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-of-Way or other public or private property, Franchisee shall promptly notify the property owner and adjacent property owners within twenty-four (24) hours.

7.12.3 Duty to Restore. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to the Public Right-of-Way or other public property, it shall promptly remove any unauthorized obstructions therefrom and restore the disturbed surface of such Public Rights-of-Way and public property to as good or better a condition as existed before the Work was undertaken. If the City determines that complete or satisfactory restoration is not obtainable, the City shall have the right to require compensation for the less than complete or satisfactory condition of the Public Right-of-Way or public property. Franchisee shall complete the restoration work within forty-eight (48) hours or as authorized by the Mayor.

7.12.4 Temporary Restoration. If weather or other conditions do not allow the complete restoration required by this Section, Franchisee shall temporarily restore the affected Public Right-of-Way or public property. Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

7.12.5 Survey Monuments. All survey monuments which are disturbed or displaced by any Work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications.

7.12.6 Approval. The Mayor shall be responsible for observation and final approval of the condition of the Public Rights-of-Way and City property following any restoration activities therein. Franchisee is responsible for all testing and monitoring of restoration activities.

7.12.7 Warranty. Franchisee shall warrant any restoration work performed by Franchisee in the Public Right-of-Way or on other public property for one (1) year, unless a longer period is required by the Municipal Code or any generally applicable ordinance or resolution of the City. If restoration is not satisfactorily and timely performed by Franchisee, the City may, after thirty (30) days prior written notice to Franchisee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from Franchisee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, Franchisee shall pay the City.

7.12.8 Restoration of Private Property. When Franchisee does any Work in the Public Right-of-Way that affects, disturbs, alters, or damages any adjacent private property, it shall, at its own expense, be responsible for restoring such private property to the satisfaction of the private property owner.

7.13 Approvals. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Franchisee's Design Documents or to ascertain whether Franchisee's proposed or actual Construction is adequate or sufficient or in conformance with the 100% Design Submittal reviewed and approved by the City. No approval given, inspection made, review or supervision performed by the City pursuant to or under authority of this Franchise shall constitute or be construed as a representation or warranty express or implied by the City that such item reviewed, approved, inspected, or supervised, complies with applicable Laws or this Franchise or meets any particular Standard, code or requirement, or is in conformance with the approved 100% Design Submittal, and no liability shall attach with respect thereto. City approvals and inspections as provided herein, are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or Construction of the Facilities or Utility System, suitability of the Franchise Area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a governmental entity. City is under no obligation or duty to supervise the design, Construction, or operation of the Utility System.

7.14 Abandonment of Facilities. Except as may be otherwise provided by Law, Franchisee may abandon in place any Facilities in the Public Rights-of-Way upon written notice to the City, which notice shall include a description of the Facilities it intends to abandon, the specific location in the Public Rights-of-Way of such Facilities, and the condition of such Facilities. However, if the City determines within 90 days of the receipt of notice of abandonment from Franchisee, that the safety, appearance, functioning, or use of the Public Rights-of-Way and other facilities in the Public Rights-of-Way, including without limitation, utilities and related facilities, will be adversely affected, the operator must remove its abandoned Public Rights-of-Way Facilities by a date specified by the City and restore the portion of the Public Rights-of-Way where the removal occurred to the same or better condition than existed immediately prior to removal. Within 60 days of a request by the City, Franchisee shall execute such documents as may be required to convey such abandoned property to the City free and clear of all encumbrances. Absent such request and conveyance, Franchisee shall be and remain responsible for any Facilities abandoned in the Public Rights-of-Way.

7.15 Aerial and Underground Construction. If all of the distribution lines of all of the wireline service providers, including without limitation telecommunications service providers, as defined in RCW 35.99.010, a utility service provider or a cable operator (collectively "Service Providers") in any portion of the Franchise Area are underground, with the exception of power company lines, Franchisee shall similarly place its Facilities underground within that area except antennas and associated cables; provided that such underground locations are actually capable of accommodating Franchisee's Facilities without unreasonable technical degradation of transmission quality. In any portion(s) of the Franchise Area where the distribution lines of any of the respective Service Providers are both aerial and underground, Franchisee shall have the discretion to construct, operate, and maintain its Facilities, or any part thereof, aerially or underground to the extent consistent with applicable regulations and this Franchise except that Franchisee may at any time construct, operate, and maintain its antennas and associated cables above ground, overhead or aerially. In areas where a Service Provider's wiring is aerial, Franchisee may install aerial Facilities, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation, except that this provision shall not apply to Franchisee's antennas and associated cables. If funds exist, are set aside

for such purpose, or provided by a third party, Franchisee may seek reimbursement for its share of funds to offset the cost of placing its facilities underground. Franchisee shall utilize existing conduit wherever possible.

The City shall not be required to obtain any easements or other property rights for Franchisee. Franchisee shall, to the extent economically feasible, participate with other Service Providers in joint trench projects to relocate its overhead Facilities (except antennas and associated cables) underground and remove its overhead Facilities (except antennas and associated cables) in areas where utilities are being converted to underground.

In the event of a City-driven facilities relocation project that requires conversion of overhead facilities to underground for purposes of health, safety or public welfare, Franchisee agrees to bear the costs of converting Franchisee's Facilities (except antennas and associated cables) from an overhead system to an underground system as follows:

A. Utility Trench and Vault/Pedestal Engineering: To ensure proper space and availability in the supplied joint trench, Franchisee shall only pay for the work hours necessary to complete Facility-related engineering coordination with the other utilities involved in the project.

B. Conduit and Vaults/Pedestals Placement: Franchisee shall only pay for the Direct Cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench and/or solo trench as follows:

1. If a City contractor is completing this task, Franchisee shall pay the Direct Costs in accordance with Franchisee's approved labor and materials exhibits at the time of the project.

2. If the Direct Costs of Franchisee's approved labor and materials exhibits are not agreeable to the City or its contractor, Franchisee shall have the option to hire its own contractor(s) to complete the work in accordance with Franchisee's approved labor and materials exhibits at the time of the project.

3. If Franchisee chooses to hire its own contractor(s), the City and its contractor(s) are responsible to coordinate with Franchisee's contractor(s) to provide reasonable notice and time to complete the placement of Franchisee's Facilities in the supplied joint trench.

C. Within the conversion area, Franchisee shall not be responsible for any on-site coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to solo trench.

ARTICLE 8 MISCELLANEOUS

8.1 Headings. Titles to articles and sections of this Franchise are not a part of this Franchise and shall have no effect upon the construction or interpretation of any part hereof.

8.2. Entire Agreement. This Franchise contains all covenants and agreements between the City and Franchisee relating in any manner to the Franchise, use, and occupancy of the Public Rights-of-Way and other matters set forth in this Franchise. No prior agreements or understanding pertaining to

the same, written or oral, shall be valid or of any force or effect and the covenants and agreement of this Franchise shall not be altered, modified, or added to except in writing signed by the City and Franchisee and approved by the City in the same manner as the original Franchise was approved.

8.3 Incorporation of Exhibits. All exhibits annexed hereto at the time of execution of this Franchise or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

8.4 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington; provided that, the Effective Date shall be determined as provided at Section 4.3 of this Franchise.

8.5 Time Limits Strictly Construed. Whenever this Franchise sets forth a time for any act to be performed by Franchisee or City, such time shall be deemed to be of the essence, and any failure of Franchisee or City, as applicable, to perform within the allotted time may be considered a Breach of this Franchise.

8.6 No Joint Venture. It is not intended by this Franchise to, and nothing contained in this Franchise shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between Franchisee and the City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner that would indicate any such relationship with the other. The Parties intend that the rights, obligations, and covenants in this Franchise and the collateral instruments shall be exclusively enforceable by the City and Franchisee, their successors, and assigns. No term or provision of this Franchise is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, Franchisee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. Nothing in this Section 8.6 shall be construed to prevent an assignment as provided for at Section 7.8.7 of this Franchise.

8.7 Approval Authority. Except as may be otherwise provided by Law or herein, any approval or authorization required to be given by the City, shall be given by the Mayor.

8.8 Binding Effect upon Successors and Assigns. All of the provisions, conditions, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, receivers, trustees, legal representatives and assigns of Franchisee; and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever Franchisee is named herein.

8.9 Waiver. No failure by either Party to insist upon the performance of any of the terms of this Franchise or to exercise any right or remedy consequent upon a Breach thereof, shall constitute a waiver of any such Breach or of any of the terms of this Franchise. None of the terms of this Franchise to be kept, observed or performed by either Party, or no breach thereof, shall be waived, altered or modified except by a written instrument executed by the injured Party. No waiver of any Breach shall affect or alter this Franchise, but each of the terms of this Franchise shall continue in full force and

effect with respect to any other then existing or subsequent Breach thereof. No waiver of any default of the defaulting Party hereunder shall be implied from any omission by the injured Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the injured Party shall not be construed as a waiver of a subsequent breach of the same covenant, term or conditions.

8.10 Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence, or its application to any person or circumstance (collectively referred to as “Term”), shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, such Term declared illegal, invalid or unconstitutional shall be severable and the remaining Terms of the Franchise shall remain in full force and effect unless to do so would be inequitable or would result in a material change in the rights and obligations of the Parties hereunder; provided, however, that if either Franchisee or the City prevails in any proceeding seeking a finding that any Term invalid, illegal or unconstitutional for any reason, this Franchise shall be declared terminated and all rights and obligations hereunder shall immediately cease and be of no force and effect except with regard to those provisions that survive termination of this Franchise pursuant to Section 8.14 herein. In the event that such Term shall be held or otherwise mutually agreed to by the City and Franchisee to be illegal, invalid, or unconstitutional, the Parties shall reform the Franchise pursuant to Section 3.5 herein.

8.11 Signs. No signs or advertising shall be permitted to be posted or otherwise displayed by Franchisee within the Franchise Area except as may be allowed or required by Law or as may be required by the City for the protection of the public health, safety and welfare, to the extent it has authority to do so.

8.12 Discriminatory Practices Prohibited. Throughout the Franchise Term, Franchisee shall fully comply with all equal employment and nondiscrimination provisions of applicable Law.

8.13 Notice. Any notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective, (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, (ii) when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below, or (iii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, properly sealed and addressed as follows:

Franchisee’s address:

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

With a copy to: Seattle SMSA Limited Partnership
d/b/a Verizon Wireless
Attn: Pacific Market General Counsel

**15505 Sand Canyon Avenue
Irvine, CA 92618**

**The City's Address: City of Edgewood Washington
Attn: Mayor
2224 104th Avenue
Edgewood, Washington 98372-1513**

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

8.14 Survival of Terms. Upon the expiration, termination, revocation or forfeiture of the Franchise, Franchisee shall no longer have the right to occupy the Franchise Area for the purpose of providing services authorized herein. However, Franchisee's obligations under this Franchise to the City shall survive the expiration, termination, revocation or forfeiture of these rights according to its terms for so long as Franchisee's Facilities or any part thereof remain in whole or in part in the Public Rights-of-Way, or until Franchisee transfers ownership of all Facilities in the Franchise Area to the City or a third-party, or until the Franchisee abandons said Facilities in place, all as provided herein. Said obligations include, by way of illustration and not limitation, Franchisee's obligations to indemnify, defend, and protect the City, to provide insurance, to relocate its Facilities, and to reimburse the City for its costs to perform Franchisee work.

8.15 Force Majeure. In the event Franchisee is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, unusually severe weather conditions, employee strikes and unforeseen labor conditions not attributable to Franchisee's employees, Franchisee shall not be deemed in Breach of provisions of this Franchise.

If Franchisee believes that circumstances beyond its control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Franchise, Franchisee shall provide documentation as reasonably required by the City to substantiate Franchisee's claim. Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City; provided that, Franchisee shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible, provided that Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with Franchise without unduly endangering the health, safety, and integrity of Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

8.16 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, whether in contract or in tort or both, is instituted to enforce any word, article, section, subsection, paragraph, provision, condition, clause or sentence of this Franchise or its application to any person or circumstance, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys, paralegals, accountants, and other experts fees and all other fees, costs, and

expenses actually incurred and reasonably necessary in connection therewith, as allowed by Washington law and as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law. This provision shall not apply to dispute resolution proceedings under section 6.1 of this Franchise and shall not apply to the extent that the suit, action, arbitration or other proceeding is brought to interpret any term, condition, provision, section, article or clause of this Franchise.

8.17 Venue/Choice of Law. This Franchise shall be governed and construed in accordance with the laws of the State of Washington. Any action brought relative to enforcement of this Franchise, or seeking a declaration of rights, duties or obligations herein, shall be initiated in Pierce County Superior Court. Removal to federal court shall be to the Federal Court of the Western District of Washington.

8.18 Publication. This ordinance, or a summary thereof, shall be published in the official newspaper of the City, the expense of which shall be borne by Franchisee, and shall take effect and be in full force in accordance with Section 4.3 herein.

8.19 Preemption. In the event that Federal or State Law preempts a provision or limits the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent required by Law. In the event such federal or State Law is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or Franchisee.

8.20 Regulatory Authority Reserved. Nothing herein shall be construed as a waiver, abridgment or limitation of the City's regulatory authority and police power, which the City hereby expressly reserves in full.

Remainder of page left intentionally blank. Signature page immediately follows.

**Presented to Council for First Reading on August 8, 2017
Presented to Council for Second Reading on August 22, 2017**

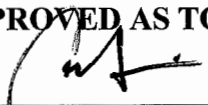
ADOPTED BY THE CITY COUNCIL ON AUGUST 22, 2017

Daryl Eiding, Mayor

ATTEST/AUTHENTICATED:

Rachel Pitzel, City Clerk

APPROVED AS TO FORM:



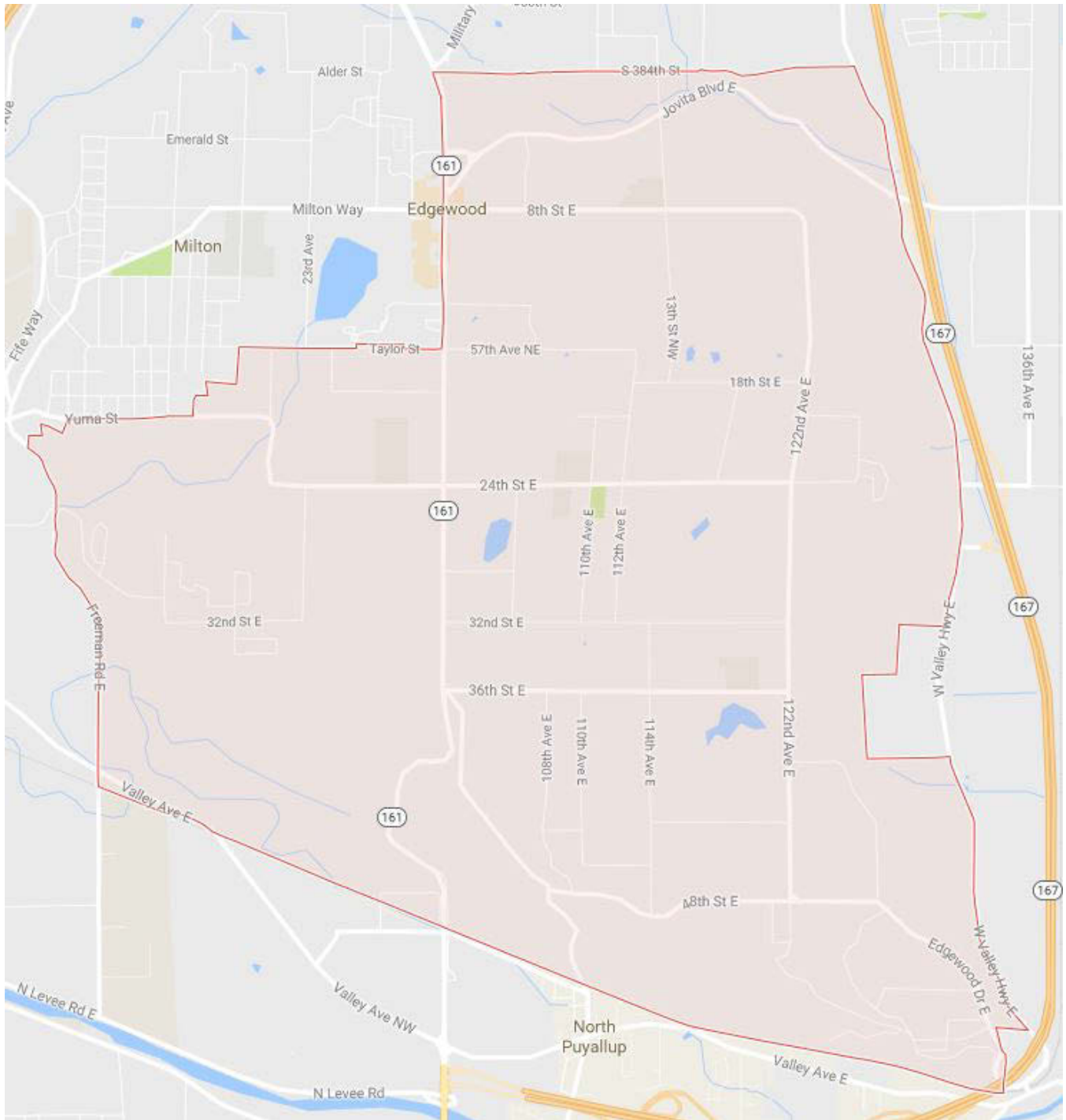
Carol Morris, City Attorney

Date of Publication: _____

Effective Date: _____

EXHIBIT "A-1"

(Franchise Area – Incorporated Area of the City)



TRANSFER EXHIBIT "A"

Acceptance of Franchise

Franchise issued pursuant to Ordinance No. _____ and accepted _____,
20____; Transfer authorized pursuant to Resolution No. _____, effective _____,
20____.

I, _____, am the _____, and (am the
authorized representative to) accept the above-referenced Franchise on behalf of Seattle SMSA Limited
Partnership d/b/a Verizon Wireless, by Cellco Partnership, its General Partner. I certify that this
Franchise and all terms and conditions thereof are accepted, and agreed to, by Seattle SMSA Limited
Partnership d/b/a Verizon Wireless, by Cellco Partnership, its General Partner.

DATED this _____ day of _____, 20____.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____
CITY OF _____

ss.

I certify that I know or have satisfactory evidence that _____ is the
person who appeared before me, and said person acknowledged that said person signed this instrument,
on oath stated that said person was authorized to execute the instrument and acknowledged it (as the
_____ of _____, a _____ corporation,) to be the
free and voluntary act of such corporation/individual for the uses and purposes mentioned in the
instrument.

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name

Notary public in and for the state of _____,
residing at _____

My appointment expires _____

EXHIBIT "B"

(Acceptance of Franchise)

Franchise issued pursuant to Ordinance No. _____.

I, _____, am the _____, and (am the authorized representative to) accept the above-referenced Franchise on behalf of Seattle SMSA Limited Partnership d/b/a Verizon Wireless, by Cellco Partnership, its General Partner. I certify that this Franchise and all terms and conditions thereof are accepted by Seattle SMSA Limited Partnership d/b/a Verizon Wireless, by Cellco Partnership, its General Partner.

DATED this _____ day of _____, 20____.

By _____
Its _____

Tax Payer ID# _____

STATE OF _____
CITY OF _____

ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it (as the _____ of _____, a _____ corporation,) to be the free and voluntary act of such corporation/individual for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name

Notary public in and for the state of _____,
residing at _____

My appointment expires _____

EXHIBIT “C”

(Insurance Requirements)

1 General Requirement. Commencing upon issuance of the first Regulatory Permit under this Franchise, Franchisee must have adequate insurance at all times while Franchisee owns or operates Facilities in the Public Rights-of-Way, to protect against claims for death or injuries to Persons or damages to property which in any way relate to, arise from or are connected with this Franchise or Site Specific Permit, or involve the Facilities, Franchisee, its agents, representatives, contractors, subcontractors and their employees.

2 Insurance Limits. The Franchisee shall maintain the following insurance coverages and limits:

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, and shall provide coverage for all costs, including defense costs, and losses and damages resulting from bodily injury (including death), property damage, personal and advertising injury, contractual liability and products liability/completed operations. Coverage must be written with the following limits of liability:

\$5,000,000 per occurrence,
\$5,000,000 general aggregate and
\$5,000,000 products/completed operations aggregate.

2.2 Commercial Automobile Liability: covering all owned, hired, and non-owned vehicles with a combined single limit of \$5,000,000 each accident for bodily injury and property damage.

2.3 Workers Compensation Insurance: shall be maintained during the life of this Franchise to comply with statutory requirements of the State and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit covering all employees, and in the case any work is sublet, the Franchisee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all of their employees.

2.4 Intentionally deleted.

2.5 Pollution Legal Liability Insurance: (At the option of the City) \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

3 Endorsements. Franchisee Commercial General Liability insurance policies are to contain, the following:

3.1 The Franchisee's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Franchisee's insurance and shall not contribute to it.

3.2 Franchisee shall waive its rights of subrogation for workers compensation against the City for all claims and suits.

3.3 That the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.4 The Franchisee's insurance shall include the City as an additional insured as their interest may appear under this Franchise, from and against Liabilities arising out of work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Franchisee's insurance shall include a requirement that the "railroad exclusion" be deleted.

3.6 Intentionally deleted.

3.7 If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4 Acceptability of Insurers. Each insurance policy obtained pursuant to this Franchise shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "VII", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Franchisee shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards.

5 Verification of Coverage. The Franchisee shall furnish the City with signed certificates of insurance and a copy of the blanket additional insured endorsement evidencing the Automobile Liability and Commercial General Liability insurance of the Franchisee upon acceptance of this Franchise. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

6 Deductible. Intentionally deleted.

7 No Limitation. Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at law or in equity.

8 Modifications of Coverages and Limits. The City reserves the right, during the the Franchise Term, to require any other insurance coverage or adjust the policy limits as it deems reasonably necessary utilizing sound risk management practices and principals based upon the loss exposures. Prior to imposing such additional coverage or adjusting existing required coverages or

limits, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.

9 Public Franchisees. Intentionally deleted.

EXHIBIT "D"

(Financial Security)

1. Performance Bond.

1.1 Franchisee shall provide to the City a faithful performance bond in the amount of one hundred twenty five percent (125%) of the costs of design, materials, and labor to ensure the full and faithful performance of all of its responsibilities under this Franchise, including, by way of example and not limitation, its obligations to relocate and remove its Facilities, to restore the Public Right-of-Way and other property when damaged or disturbed, to reimburse the City for its Direct Costs and keeping Franchisee's insurance in full force.

1.2 The performance bond shall be in a form with terms and conditions reasonably acceptable to the City and reviewed and approved by the City Attorney.

1.3 The performance bond shall be with a surety with a rating no less than "A X" in the latest edition of "Bests Rating Guide," published by A.M. Best Company.

1.4 The Franchisee shall pay all premiums or costs associated with maintaining the performance bond, and shall keep the same in full force and effect at all times during the Franchise Term. If Franchisee fails to provide or maintain the bond, then the City, in its sole discretion, may require Franchisee to substitute an equivalent cash deposit as described below in lieu of the bond.

1.5 Franchisee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by Franchisee, or limit the liability of Franchisee to the amount of the bond(s), or otherwise limit the City's recourse to any other remedy available at law or in equity.

1.6 Intentionally deleted.

2 Cash Deposit/Irrevocable Letter of Credit in Lieu of Bond.

Franchisee may, at its election or upon order by the City pursuant to Section 4 herein, substitute an equivalent cash deposit with an escrow agent approved by the City or an irrevocable letter of credit in form and content approved by the City Attorney, instead of a performance bond. This cash deposit or irrevocable letter of credit shall ensure the full and faithful performance of all of Franchisee's responsibilities hereto under this Franchise. This includes but, is not limited to, its obligations to relocate or remove its facilities, restore the Public Rights-of-Way and other property to their original condition, reimbursing the City for its Direct Costs, and keeping Franchisee's insurance in full force.

The City shall notify Franchisee in writing, by certified mail, of any default and shall give Franchisee thirty (30) days from the date of such notice to cure any such default. In the event that the Franchisee fails to cure such default to the satisfaction of the City, the City may, at its option, draw upon the cash deposit or letter of credit up to the amount of the City's costs incurred to cure Franchisee's default. Upon the City's cure of Franchisee's default, the City shall notify Franchisee in writing of such cure.

In the event that the City draws upon the cash deposit or letter of credit, Franchisee shall thereupon replenish the cash deposit or letter of credit to the full amount as specified herein or provide a replacement performance bond.

3 Restoration Bond.

3.1 Unless otherwise provided in a Regulatory Permit issued by the City for work within the Public Right-of-Way, or by City ordinance, code, rule, regulation or Standards, the City may require Franchisee to enter into a performance agreement, secured by a restoration bond written by a corporate surety reasonably acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of restoring the Public Rights-of-Way to their pre-construction condition in accordance with Section 7.12 of the Franchise. Such restoration bond shall be deposited before construction is commenced. Such restoration bond may be required, when the City determines that the Performance Bond or cash deposit/letter of credit is not sufficient to protect the interests of the City for Permitted Work.

3.2 The restoration bond shall remain in force until sixty (60) days after substantial completion of the work, as determined by the city engineer or designee, including restoration of all rights-of-way and other property affected by the construction.

3.3 In the event that a bond issued to meet the requirements of this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, Franchisee shall, prior to expiration of said bond, be responsible for obtaining a replacement bond which complies with the terms of this Section.

3.4 The performance agreement shall provide for the following:

3.4.1 Timely completion of construction;

3.4.2 Construction in compliance with applicable approved plans, Utility Permits, technical codes, and Standards;

3.4.3 Proper location of the Facilities as approved by the City;

3.4.4 Restoration of the Public Rights-of-Way and other public or private property disrupted, damaged, or otherwise affected by the construction. The performance agreement shall warrant said restoration work for a period of one (1) year;

3.4.5 The submission of “record” drawings after completion of the Work; and

3.4.6 Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

EXHIBIT “E”

(Contractor/Subcontractor Insurance Requirements)

Franchisee will require any contractors and subcontractors to obtain and maintain substantially the same coverage with substantially the same limits as required of Franchisee under this Franchise.

From: [Colin Robinson](#)
To: [Aaron Nix](#)
Cc: [Colin Robinson](#)
Subject: RE: City of Edgewood Franchise Agreement (revised) | Verizon Wireless
Date: Thursday, August 17, 2017 1:53:56 PM
Attachments: [image003.jpg](#)
[image001.jpg](#)

Hi Aaron,

Verizon is preparing a response regarding emergency communication options.

Could you confirm the time of the meeting on Tuesday? I see that it is scheduled for Tuesday the 22nd but not the time.

Thanks,

Colin

Colin Robinson

Site Acquisition Specialist



CENTERLINE SOLUTIONS

8218 154th Avenue NE #120
Redmond WA 98052

Phone: 425-533-2665

Mobile: 360-561-3311

Web: www.centerlinesolutions.com

From: Aaron Nix [mailto:aaron@cityofedgewood.org]
Sent: Wednesday, August 16, 2017 11:21 AM
To: Colin Robinson <crobinson@centerlinesolutions.com>
Cc: Daryl Eiding <daryl.eiding@cityofedgewood.org>; Dave Gray <dave@cityofedgewood.org>
Subject: RE: City of Edgewood Franchise Agreement (revised) | Verizon Wireless

Colin,

I'm prepping the franchise agreement for second reading and adopting for next Tuesday's Council meeting. It is final draft form (Attached), with no modifications from the one you sent me originally. Not sure if you had an opportunity to discuss the potential of emergency communication options that Verizon may be able to help the City of Edgewood with in exchange for the use of City of right of way, as expressed by our Council at the August 1st Study Session, if there are any options? In any event, I just thought I would touch bases before I proceed, as I was asked to do.

Appreciated,

Aaron C. Nix, M.P.A.
City of Edgewood, WA
Assistant City Administrator –
Public Works/Interim Community Development Director
(253) 952-3299

From: Colin Robinson [<mailto:crobinson@centerlinesolutions.com>]
Sent: Thursday, July 27, 2017 4:53 PM
To: Aaron Nix <aaron@cityofedgewood.org>
Cc: Kirk Rappe <kirk@cityofedgewood.org>; Colin Robinson <crobinson@centerlinesolutions.com>
Subject: RE: City of Edgewood Franchise Agreement (revised) | Verizon Wireless

Hi Aaron,

Thanks for letting us know about this progress. Would you like to have anyone from Verizon on hand to answer questions at the study session? We can also provide any presentation materials that would be helpful.

Thanks,

Colin

Colin Robinson
Site Acquisition Specialist
 **CENTERLINE SOLUTIONS**

8218 154th Avenue NE #120
Redmond WA 98052

Phone: 425-533-2665

Mobile: 360-561-3311

Web: www.centerlinesolutions.com

From: Aaron Nix [<mailto:aaron@cityofedgewood.org>]
Sent: Tuesday, July 25, 2017 2:57 PM
To: Colin Robinson <crobinson@centerlinesolutions.com>
Cc: Kirk Rappe <kirk@cityofedgewood.org>
Subject: RE: City of Edgewood Franchise Agreement (revised) | Verizon Wireless

Hi Colin, I'm discussing the draft franchise agreement with our Council at next week's Study session. We should be able to proceed to first and second readings shortly thereafter and adoption by mid-August is my ambition. Our City Council is very interested in the notion of permitting small cells with the recent presentation that was given to us that integrated public safety amenities into the design of the small cells. Particularly, light standards. Couple this with the area in Edgewood in which Verizon has expressed to us that they have a significant need for enhanced coverage, is the same area that we have significant need for improved traffic safety lighting (Southeast Edgewood). Based

on my discussions with our legal staff and others, this may be best integrated into the franchise agreement. If you all have some other thoughts/suggestions, I'm very open to discussing them.

Aaron C. Nix, M.P.A.
City of Edgewood, WA
Assistant City Administrator –
Public Works/Interim Community Development Director
(253) 952-3299

From: Colin Robinson [<mailto:crobinson@centerlinesolutions.com>]
Sent: Tuesday, July 25, 2017 2:40 PM
To: Aaron Nix <aaron@cityofedgewood.org>
Cc: Kirk Rappe <kirk@cityofedgewood.org>; Colin Robinson <crobinson@centerlinesolutions.com>
Subject: RE: City of Edgewood Franchise Agreement (revised) | Verizon Wireless

Hi Aaron,

Just following up on this.

Thanks,

Colin

Colin Robinson
Site Acquisition Specialist
 **CENTERLINE SOLUTIONS**

8218 154th Avenue NE
Redmond WA 98052

Phone: 425-533-2665

Mobile: 360-561-3311

Web: www.centerlinesolutions.com

From: Colin Robinson
Sent: Monday, July 17, 2017 11:52 AM
To: aaron@cityofedgewood.org
Cc: Colin Robinson <crobinson@centerlinesolutions.com>; Kirk Rappe <kirk@cityofedgewood.org>
Subject: FW: City of Edgewood Franchise Agreement (revised) | Verizon Wireless

Hi Aaron,

I wanted to check in to see how the review of the franchise agreement is proceeding.

Also, if there are any next steps we could take regarding a code revision to allow for the placement of small cells on utility poles please let me know.

Thanks,

Colin

Colin Robinson

Site Acquisition Specialist



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Web: www.centerlinesolutions.com

From: Colin Robinson

Sent: Thursday, May 4, 2017 1:18 PM

To: 'aaron@cityofedgewood.org' <aaron@cityofedgewood.org>

Cc: Colin Robinson <crobinson@centerlinesolutions.com>

Subject: City of Edgewood Franchise Agreement (revised)

Hi Aaron,

I attached the latest version of the redlines from Verizon legal for the franchise agreement. Are you the right contact for this?

Thanks,

Colin

Colin Robinson

Site Acquisition Specialist



CENTERLINE SOLUTIONS

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Web: www.centerlinesolutions.com

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CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 17-0507

Date Action Requested: August 22, 2017

Title: Findings of Fact for Planned Residential Development Moratorium

Attachments: Findings of Fact Ordinance No. 17-0507

Submitted By: Carol Morris, City Attorney

Approved For Agenda By: Daryl Eidinger, Mayor

Prepared For Agenda By: Carol Morris, City Attorney

Recommendation: Move to adopt Ordinance No. 17-0507, adopting findings of fact to support the maintenance of the six month moratorium imposed by the City on July 11, 2017, under Ordinance 17-0504 on the acceptance of applications for planned residential developments (PRD's) Under EMC 18.50.095, said Moratorium adopted for the purpose of allowing the City to evaluate the existing regulations for consistency with law and the City's Comprehensive Plan, and such Moratorium to be in effect while the City performs the necessary infrastructure analysis, legal review and flows the processes for any needed code amendments, all as required by RCW 36.70A.390.

Discussion: As described in detail to the Council, Public and others, it was Staff's understanding that conflicts in regard to project decision timing were present within the City's current version of its Planned Residential Development code language and lacked clarity in regard to identifying specific benefits that the code was attempting to outline in exchange for flexibility in other areas regulating Development. Because of this, the City Council initiated a 6-month Moratorium in order to evaluate these issues within Edgewood Municipal Code and allow Staff, the City Attorney and the City's Planning Commission to revise this language and present to them for evaluation and adoption, if warranted. The attached Ordinance provides Findings of Fact in support of this pathway and allows the process to move forward.

Alternatives: 1) Do not adopt. 2) Forward to Study Session for further review

Fiscal Impact: N/A

ORDINANCE NO. 17-0507

AN ORDINANCE OF THE CITY OF EDGEWOOD, WASHINGTON, ADOPTING FINDINGS OF FACT TO SUPPORT THE MAINTENANCE OF THE SIX-MONTH MORATORIUM IMPOSED BY THE CITY ON JULY 11, 2017, UNDER ORDINANCE NO. 17-0504 ON THE ACCEPTANCE OF APPLICATIONS FOR PLANNED RESIDENTIAL DEVELOPMENTS (PRD'S) UNDER EMC 18.50.095, SAID MORATORIUM ADOPTED FOR THE PURPOSE OF ALLOWING THE CITY TO EVALUATE THE EXISTING REGULATIONS FOR CONSISTENCY WITH LAW AND THE CITY'S COMPREHENSIVE PLAN, AND SUCH MORATORIUM TO BE IN EFFECT WHILE THE CITY PERFORMS THE NECESSARY INFRASTRUCTURE ANALYSIS, LEGAL REVIEW AND FOLLOWS THE PROCESSES FOR ANY NEEDED CODE AMENDMENTS, ALL AS REQUIRED BY RCW 36.70A.390

WHEREAS, RCW 36.70B.080(1) requires the City of Edgewood to adopt development regulations which address the deadline for the City's issuance of a final decision on "project permit applications," which include planned residential developments; and

WHEREAS, the City has adopted Planned Residential Development (PRD) regulations in Edgewood Municipal Code Section 18.50.095, without a no deadline for the issuance of a final decision; and

WHEREAS, RCW 58.17.070 provides that "unless an applicant for preliminary plat approval requests otherwise, a preliminary plat **shall** be processed simultaneously with applications for rezones, variances, planned unit developments, site plan approvals and similar quasi-judicial or administrative actions to the extent that procedural requirement applicable to these actions permit simultaneous processing;" and

WHEREAS, the City's PRD regulations do not require concurrent processing of a PRD application with an application for a preliminary plat (as required by RCW 58.17.070);¹ and

WHEREAS, the City cannot approve a preliminary plat or short plat if it doesn't comply with the City's zoning regulations (RCW 58.17.195); and

WHEREAS, the City's PRD regulations in EMC Section 18.50.095, allow a developer to obtain approval of a preliminary plat with an increase in the density allowed by the zoning regulations applicable to the subject property, before the PRD application is processed; and

¹ EMC Section 18.50.095(K)(4) provides that "an application for a preliminary plat or other development approval may be submitted with the PRD application, if necessary."

WHEREAS, the City's PRD regulations provide that the Hearing Examiner's makes a recommendation on the PRD to the City Council, and the Council makes the final decision (EMC 18.50.095(N); and

WHEREAS, the City's procedures for processing a preliminary plat provide that the Hearing Examiner makes a final decision, which can be appealed to the City Council (EMC 18.40.100); and

WHEREAS, because the City is required by state law to process a PRD and preliminary plat concurrently, the processing procedures must be amended so that they are consistent (both with regard to the decision-maker, criteria for approval and the deadline for issuance of a final decision); and

WHEREAS, EMC 18.50.095(J) allows an increase in density of a PRD of up to 20 percent in excess of the density in the underlying zone, but if the developer satisfies five of the criteria in that subsection, an increase in density of up to 50 percent over the density in the underlying zone may be allowed; and

WHEREAS, while the City is considering amendments to EMC 18.50.095, the City also needs to consider whether the criteria for approval of a PRD are clear and enforceable (EMC 18.50.095(A) requires that a PRD must:

1. Promote the retention of significant features of the natural environment, including without limitation waterways and views;
2. Encourage a variety of housing types in relating to the city's existing housing stock;
3. Encourage maximum efficiency in the location of streets, utility networks and other public improvements; and
4. Create and/or preserve open space for the enjoyment of the occupants and the general public;

In addition, EMC 18.50.095(E) requires that the design and layout of the PRD "shall positively accentuate and harmonize the relationship of the site to the surrounding area and existing uses"; and

WHEREAS, if the City's code potentially allows a development to exceed the density in the underlying zone by 20 or 50 percent, the City's comprehensive plan must include analyses of the availability of water, sewer and transportation infrastructure to demonstrate that such potential development can be served; and

WHEREAS, EMC 18.50.095(N) sets forth criteria for the Hearing Examiner to consider when determining whether to approve a PRD, which are not the same criteria for approval in other sections of the PRD section (EMC 18.50.095(A), (E), (H) or (J)); and

WHEREAS, RCW 36.70A.390 authorizes the City to adopt a moratorium on the acceptance of applications for PRD's, to be effective for a period of up to six months, provided that a public hearing is held within at least 60 days of the adoption of the moratorium, and findings and conclusions are adopted immediately thereafter to support the moratorium; and

WHEREAS, on August 8, 2017, pursuant to the notice required by law, the City Council held a public hearing on Ordinance 17-0504;

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

Section 1. Finding of Fact. In addition to the above "whereas" sections, the City Council hereby adopts the following as findings of fact to support the continued maintenance of the moratorium imposed in Ordinance 17-0504, for a period of six months, beginning on July 11, 2017:

A. **Public Hearing.** During the public hearing on Ordinance 17-0504, the following persons testified and/or provided information:

1. Aaron Nix, Assistant City Administrator, described the rationale behind the adoption of Ordinance 17-0504, which is included in the "whereas" sections of this Ordinance.

2. Linda Howard stated her belief that the City's codes needed to be reviewed, and "brought up to standard." She mentioned the letter she had sent to the Council, in which she informed the Council that the codes needed to be updated.

3. Mark Kibler stated that he understood that the City Council is trying to keep the community "rural," by developing Meridian instead of the outer limits, but he has been disappointed with the way growth has occurred in the City. He hoped for beautification, but the City is not attractive right now. He did not believe that there has been any "foresight," and more thought needed to be put into the way the City was being developed.

4. Gabriel Bowman of the Master Builders Association spoke briefly about what Pierce County as a whole was facing. He noted that last year, 80,000 people have moved to Pierce County for their jobs. He stated that residential growth was needed, but admitted that there should be "smart growth."

5. Carol Morris, City Attorney, described the procedure for the Council to use in the adoption of the findings of fact.

6. Carol Hubbard stated that she loves Edgewood, but she would like to make Edgewood different by keeping a rural feel. She was directly affected by a recent development. The property was a "park-like setting," but the trees were leveled to make way for the apartments. Ms. Hubbard acknowledged that people need a place to live, but she asked the Council to realize that preserving the natural landscape should be most important.

B. Council Vote. The Council deliberated for a short time, expressing the view that the moratorium should remain in place, and that it was the right decision to review the PRD code. The vote was unanimous in favor of keeping the six month moratorium in place for all PRD applications.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force immediately upon adoption, having received the vote of a majority plus one of the entire Council.

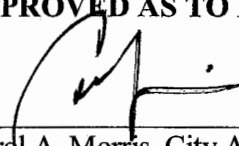
ADOPTED BY THE CITY COUNCIL ON August __, 2017

Daryl Eidinger, Mayor

ATTEST/AUTHENTICATED:

Rachel Pitzel, City Clerk

APPROVED AS TO FORM:



Carl A. Morris, City Attorney

Date of Publication: XX, 2017
Effective Date: XX, 2017



**CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION
AGENDA BILL NO. : 17-0383**

Date Action Requested: August 22, 2017

Title: Amendment to BHC Agreement for On-Call Professional Planning Services

Attachments: Resolution No. 17-0383; Amendment to BHC Agreement

Amendment to June 13, 2017 BHC Agreement for Professional Planning Services

Submitted By: Aaron Nix, ACA Municipal Services

Approved For Agenda By: Daryl Eiding, Mayor

Discussion: When the City executed the original Agreement for Professional Planning Services with BHC it anticipated some design and process control work with some interim plan review assistance. Less than two months into BHC assisting the City, a substantive surge of permit requests requiring timely plan review have been received. The Assistant City Administrator of Municipal services believes the risk of missing plan review deadlines due to the sudden increase in planning activity combined with the intake of a new Community Development Director require the City to proactively extend the on-call resources provided by BHC.

Recommendation: Authorize the Mayor to execute the Amendment to the June 13, 2017 BHC Consultants, LLC Agreement for Professional Planning Services.

Fiscal Impact: The City expects the total increase of the Agreement will be spent in the 2017 Fiscal Year, increasing the total cost of professional services by \$60,000. The City is also experiencing an increase in permit/planning fees due to the increase in business that is expected to offset the additional cost of providing those services.

RESOLUTION NO. 17-0383

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT AMENDMENT WITH BHC CONSULTANTS, LLC FOR PROFESSIONAL ON-CALL PLANNING SERVICES

WHEREAS, the City has selected BHC Consultants, LLC, renowned in the area for excellence in the field of Professional Planning Services; and

WHEREAS, the City has an existing Professional Services Agreement with the consultant who is currently performing excellent work with the City; and

WHEREAS, the City, due to a recent surge in permit application activity requiring the city to maintain a required planning review turnaround, finds itself challenged due to work load with maintaining said review timeline; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute an agreement amending the existing Agreement for Professional Planning services with BHC Consultants, LLC substantially in the form attached hereto as the Amendment to the June 13, 2017 Agreement for Professional Planning Services.

PASSED BY THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 22nd DAY OF August 2017

Daryl Eidinger, Mayor

ATTEST:

Rachel Pitzel, City Clerk

**FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
CITY OF EDGEWOOD
AND BHC CONSULTANTS, LLC.**

Section 1. Date and Parties.

This document ("First Amendment"), is dated the 22ND day of August, 2017, and is entered into by and between the CITY OF EDGEWOOD, a Washington municipal corporation ("City") and BHC Consultants, LLC, ("Consultant"). This First Amendment modifies the Professional Services Agreement dated June 13, 2017, by and between the City and Consultant (the "Agreement").

Section 2. General Recitals.

A. The City and Consultant entered into the Contract for the purposes of Professional On-Call Planning Services.

B. According to Section IV of the Agreement, it will expire on November 30, 2017, and an amendment is required for the continuation of services.

C. According to Section II of the Agreement, the total expenditure cap for the contract is \$10,000.00.

D. Shortly after executing the contract, which the City anticipated would be to assist with designing and documenting needed process control improvements as well as some intermittent plan review, the City incurred a substantial increase in permit requests resulting in a significant volume of plan reviews. The City has hired a new Community Development Director and anticipates a substantive increase of in-house planning ability, but has determined maintaining the BHC Planning resource at this time will help the City mitigate the risk of missing deadlines and provide a better transition environment for the new CD Developer.

E. The parties have now determined that such an amendment is appropriate, and thus the intent of the First Amendment is for the Consultant to provide further Professional Planning services to the City for a longer period of time with an increased not to exceed expenditure sum.

Section 3. Compensation and Hourly Rate. Section II(A) of the Agreement shall be modified as follows:

A. This Agreement does not guarantee any amount of work for the Consultant. Task Orders will be developed as determined by the City and as provided for in this Agreement. The City shall pay the Consultant an amount based on time and materials, not to exceed Sixty Thousand Dollars (\$60,000) for the services described in Section 1 herein. This is the maximum amount to be

paid under this Agreement for the work described in this Agreement and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time set forth in Section IV herein, before reaching the maximum amount. ...

Section 4. Amendment to Section IV. Section IV, "Duration of Work" of the Agreement shall be amended to read as follows:

The Consultant shall not begin any work under this Agreement until an authorized Task Order has been agreed upon by the parties, and the City has issued a Notice to Proceed. This Agreement shall expire on February 28, 2018.

Section 5. Other Terms Unchanged. All other terms of the Agreement, including all Exhibits, remain unchanged and enforceable. The First Amendment is intended to modify the terms and conditions of the Agreement only insofar as such modifications are set forth in this Amendment. In the case of any conflict between the terms of the Agreement and the terms of the First Amendment, the provisions of the First Amendment shall control.

DATED: This 22nd day of August, 2017.

CITY OF EDGEWOOD

CONSULTANT **BHC**

By: _____

By: _____

Daryl Eidinger

Ronald A. Dorn

Its: Mayor

Its: President

Date: August 22, 2017

Date: August ____, 2017

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney's Office