ORDINANCE NO. 4306

AN ORDINANCE of the City Council of the City of Kent, Washington, Granting to new Cingular Wireless PCS, LLC and its affiliates, successors and assigns, the right, privilege, authority and nonexclusive franchise for five years, to construct, maintain, operate, replace and repair a small cell telecommunications network, in across, over, along, under, through and below certain designated public rights-of-way of the City of Kent, Washington.

RECITALS

A. New Cingular Wireless PCS, LLC, a Delaware limited liability company (the “Franchisee”) has requested that the City Council grant it a nonexclusive franchise (this “Franchise”) to construct, maintain, operate, repair, upgrade, remove, replace and restore small cell networks in the City’s right-of-way; and

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

C. Small cell facilities are relatively new technology deployed by wireless providers to meet the evolving needs of consumers and their increased reliance upon mobile devices. To meet demand, wireless infrastructure must continue to be upgraded and improved.

D. In contrast to the familiar cell phone towers and monopoles, small cells are low-powered and low profile wireless base stations that
function like cells in a mobile wireless network and typically cover localized (smaller) areas. Wireless providers use small cells to provide connectivity in areas where the coverage and capacity of traditional cell towers are challenged by terrain or buildings and they also use small cells to provide enhanced capacity to users (e.g., more data, more quickly). Because they are smaller, small cells are often mounted to existing structures within the right-of-way, such as utility poles and light poles.

E. Small cell facilities and networks will also be integral to the deployment of the next generation of wireless service, known as “5G” or “5th Generation.” Wireless providers and the Federal Communications Commission claim that 5G will provide additional capacity in existing networks for emergency service, increased data use, telecommuting, and the support of Internet of Things applications.

F. The City embraces and supports small cell technology and the advances the City expects it to provide, yet also has a fundamental role to manage the rights-of-way fairly for the residents and tax-payers and protect the City’s significant investments of time, resources and money in construction, design standards and undergrounding of utilities.

G. In order to balance the deployment of new technology with the City’s role to manage the rights-of-way, this franchise includes robust, yet flexible design standards for the small cells. It also includes requirements to keep a detailed record of small cell installations, relocation requirements and penalties for unauthorized installations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:
ORDINANCE

SECTION 1. - Definitions. In addition to terms otherwise defined herein, the following definitions shall apply generally to the provisions of this Franchise.

1.1 "Director" means the Public Works Director, the Economic and Community Development Director, or his/her designee.

1.2 "Rights-of-Way" (singular "Right-of-Way") as used in this Franchise, means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, pathways, spaces, or other public right-of-way, and over which the City has authority to grant permits, licenses or franchises for use thereof, or has regulatory authority thereover. Rights-of-Way for the purpose of this Franchise do not include railroad right-of-way, airports, harbor areas, buildings, parks, poles, conduits, open spaces, nature trails, dedicated but un-opened right-of-way, undedicated streets and/or right-of-way, environmentally sensitive areas and any land, facilities, or property owned, maintained, or leased by the City in its governmental or proprietary capacity or as an operator of a utility.

1.3 "Small Cell Equipment" or "Small Cell Facilities" means Wireless Telecommunications Facilities attached, mounted, or installed on a proprietary or leased pole, excluding monopole towers, that is located in Right-of-Way and used to provide "personal wireless service" as defined in Title 47, United States Code, Section 332(c)(7)(C), including all future amendments and is substantially similar in aesthetics and proportion to those pictured in Exhibit A.

1.4 "Utility Pole" means a pole or vertical structure owned by a utility company or other third party with the right either pursuant to state law or
a franchise to place such facilities in the Right-of-Way. An “Original Utility Pole” is a pole that has not been replaced to accommodate Small Cell Facilities, but that is capable of accommodating Small Cell Facilities. A “Replacement Utility Pole” means a pole that replaces an Original Utility Pole to accommodate Small Cell Facilities and does not result in an increase in the total number of Utility Poles. Each reference to a Utility Pole herein includes any Original Utility Pole and any Replacement Utility Pole.

SECTION 2. - Franchise Granted.

2.1 Pursuant to RCW 35A.47.040, the City of Kent, a Washington municipal corporation ("City"), hereby grants to Franchisee, its successors, legal representatives and assigns, subject to the terms and conditions set forth below, a non-exclusive Franchise for a period of five (5) years beginning on the effective date of this ordinance, set forth in Section 46.

2.2 This Franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, restore, upgrade, remove, excavate, acquire, and use the Small Cell Facilities, as defined in Section 1.3, for its telecommunications network, in, under, on, across, over, through, along or below the public Rights-of-Way located in the City of Kent, as approved pursuant to City codes and permits issued pursuant to this Franchise. This Franchise does not authorize the installation of any ground mounted equipment anywhere within the Rights-of-Way.

2.3 This Franchise shall not prevent the City from granting franchises in, along, over, through, under, below, or across any Rights-of-Way. This Franchise shall not prevent or prohibit the City from using any Rights-of-Way or affect its jurisdiction over any Rights-of-Way or any part of Rights-of-Way. The City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of Right-of-Way as the City deems fit, including the dedication,
establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares, and other public properties of every type and description.

**SECTION 3. - Grant of Authority Limited.**

3.1 The authority granted by this Franchise is a limited authorization to occupy and use the Rights-of-Way throughout the City (the "Franchise Area"). The Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the City of Kent Zoning Code, the Comprehensive Plan, the Area Design and Construction Standards and the Kent Municipal Code (collectively the "Codes"). Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services. Franchisee hereby warrants that it expects to provide the following services within the City: small cell network consisting of a collection of interrelated Small Cell Facilities designed to deliver personal wireless services (the "Services"). Services do not include personal wireless services and associated facilities that fall outside of the definition of Small Cell Facilities (i.e., macro facilities).

3.2 This Franchise does not grant Franchisee the right to install and operate wires and facilities to provide wireline broadband transmission services, whether provided by a third party provider, Franchisee, or a corporate affiliate of Franchisee. Any entity that provides such wireline broadband transmission services must have an independent franchise to use the Rights-of-Way outside of this Franchise. Further, this Franchise does not grant the right to offer cable internet services or Cable Services as those terms are defined in 47 U.S.C. § 522(6) by wireline transmission.

3.3 This Franchise does not grant Franchisee the right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without
the owner’s consent, or upon or in any City, public or privately owned poles or conduits.

3.4 Nothing within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, or to subordinate the primary use of the Right-of-Way as a public thoroughfare.

3.5 If Franchisee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Franchisee desires to use City owned property, including poles and structures within the Rights-of-Way it shall enter into a separate lease or license agreement with the City.

3.6 Franchisee shall have the right, without prior City approval, to lease the Facilities, grant a right of user interest in the Facilities or any portion thereof or offer or provide capacity or bandwidth to its lessees or customers consistent with this Franchise provided:

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

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

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

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

SECTION 4. - Location of Facilities.

4.1 Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Design and Construction Standards and area design and construction standards and subject to the City's applicable Code requirements. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 3.1.

4.2 To the extent that any 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") regulations, Franchisee shall comply fully with these requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

a. any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

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

c. without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.
SECTION 5. - Relocation of Small Cell Facilities.

5.1 Relocation Requirement. Franchisee agrees to protect, support, temporarily disconnect and then reconnect, relocate, or remove from any Rights-of-Way any of its Facilities when reasonably required by the City by reason of traffic conditions, public safety, dedications of new Rights-of-Way, the establishment and improvement of new Rights-of-Way, widening or improvement of existing Rights-of-Way or both, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity. Collectively, such matters are referred to within this Franchise with the term "Public Improvement."

5.2 Relocation. If the request for relocation from the City arises from a Public Improvement, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City, and at no cost to the City, subject to the procedure in Section 5.4. Franchisee acknowledges and agrees that the placement of Small Cell Facilities on third-party owned or City owned structures does not convey an ownership interest in such structures. Franchisee acknowledges and agrees, that to the extent Franchisee’s Small Cell Facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests for relocation which the City makes solely for aesthetic purposes and where such request arises out of a Public Improvement.

5.3 Locate. Upon written request of the City, or a third party performing work in the Right-of-Way, and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if determined necessary by the City,
to excavate and expose its Facilities for inspection so that the Facilities’ location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Improvement shall be made by the City upon review of the location and construction of Franchisee’s Facilities. The City shall provide Franchisee at least fourteen (14) calendar days’ written notice prior to any excavation or exposure of Facilities. Franchisee shall be responsible for any delays due to failure to locate its Facilities when requested, except that Franchisee shall not be responsible for delays or damages due to circumstances beyond the control of the Franchisee.

5.4 Notice and Relocation Process. If the City determines that the project necessitates the relocation of Franchisee’s existing Facilities, the City shall:

a. At least ninety (90) calendar days prior to commencing the project, provide Franchisee with written notice requiring such relocation and a date by which relocation must be complete; provided, however, that in the event of an emergency situation, defined for purposes of this Franchise as a condition posing an imminent threat to property, life, health, or safety of any person or entity, the City shall give Franchisee written notice as soon as practicable; and

b. At least ninety (90) calendar days prior to commencing the project, provide Franchisee with copies of pertinent portions of the plans and specifications for the improvement project and a proposed location for Franchisee’s Facilities so that Franchisee may relocate its Facilities in other City Rights-of-Way in order to accommodate such improvement project; and

c. After receipt of such notice and such plans and specifications, Franchisee shall complete relocation of its Facilities consistent
with the date for relocation established in accordance with this Section 5.4(a) at no charge or expense to the City, except as otherwise provided by law. Relocation shall be accomplished in such a manner as to accommodate the Public Improvement.

5.5 Alternative Arrangements. The Franchisee may make its own appropriate arrangements in response to a request for relocation of its Facilities from a person or entity other than the City, so long as any improvements being constructed are not or will not become City-owned, operated or maintained; except that any such arrangements shall not unduly delay a City construction project.

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

5.7 Indemnification. Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 22.

5.8 Moving of Buildings or Other Objects. Franchisee shall, on the request of any individual or private entity holding a valid permit issued by a governmental authority, temporarily remove, raise or lower its Facilities
to permit the moving of buildings or other objects. The expense of such
temporary removal, raising or lowering of Facilities shall be at the expense
of the requestor.

5.9 City’s Costs. If Franchisee fails, neglects, or refuses to remove or
relocate its Facilities as directed by the City following the procedures
outlined in this Section 5, the City may perform such work or cause it to
be done, and the City’s costs shall be paid by Franchisee pursuant to
Sections 15.3 and 15.4.

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

SECTION 6. - Undergrounding of Facilities.

6.1 No installation of Small Cell Facilities in Undergrounded Areas.
Franchisee shall not install Small Cell Facilities in areas that already have
undergrounding of aerial utilities, except as authorized by the Director and
in compliance with any Kent construction standards. Any Facilities so
located shall be approved by the Director and if such Facilities include the
installation of a new pole or installation on a City-owned pole, Franchisee
shall be required to enter into a separate agreement with the City for such
installations.

6.2 Requirement to Remove Small Cell Facilities. Franchisee hereby
acknowledges and agrees that whenever the City requires the
undergrounding of the aerial utilities in any area of the City, which
includes the removal of structures (e.g., Utility Poles) in the Rights-of-
Way, Franchisee will also be required to remove or relocate its Facilities
from such structures within the timeframe set for such undergrounding
project. If the aerial utilities are required to be undergrounded,
Franchisee’s grant of permission for Small Cell Facilities on Utility Poles in
that area will be automatically revoked upon removal of these Utility
Poles. Franchisee may re-install any Small Cell Facilities only as authorized
by the Director and in compliance with any Kent Construction Standards,
unless otherwise approved by the Director. Installation of new poles shall
require a separate agreement.

6.3 **Survival.** The provisions of this Section 6 shall survive the
expiration, revocation, or termination of this Franchise. Nothing in this
Section 6 shall be construed as requiring the City to pay any costs of
undergrounding any of the Franchisee’s Facilities.

**SECTION 7. - Information, Inventory and Records.**

7.1 **Information Request.**

a. Franchisee shall supply and maintain updated, at no cost to
the City, any information reasonably requested by the City to
coordinate its functions with the Franchisee’s activities and
fulfill any municipal functions under state law. This required
information may include, but is not limited to, any installation
inventory, location of existing or planned Facilities, maps,
plans, operational data, and as-built drawings of Franchisee’s
Facilities in the City. Franchisee shall warrant the accuracy of
all information provided to the City.

b. Within thirty (30) calendar days of a written request from the
Director, but in no event more than once annually, the
Franchisee shall furnish the City with information sufficient to
demonstrate: 1) that the Franchisee has complied with all
applicable requirements of this Franchise; and 2) that all
utility taxes due the City in connection with the Franchisee’s
services and Facilities provided by the Franchisee have been
properly collected and paid by the Franchisee.
7.2 **Current Inventory.**

a. Franchisee shall maintain a current inventory of Small Cell Facilities throughout the Term of this Franchise. Franchisee shall provide to City a copy of the inventory report no later than one hundred eighty (180) calendar days after the Effective Date of this Franchise, and an updated inventory report shall be provided by December 31 of each year and within thirty (30) calendar days of a reasonable request by the City. The inventory report shall include GIS coordinates, date of installation, type of pole used for installation, description/type of installation for each Small Cell Facility installation and photographs taken before and after the installation of the Small Cell Facility and taken from the public street.

b. Small Cell Facilities that are considered Deactivated Facilities, as described in Section 24.1, shall be included in the inventory report and Franchisee shall provide the same information as is provided for active installations as well as the date the Facilities were deactivated and the date the Deactivated Facilities were removed from the Right-of-Way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Franchisee is not required to report on future inventory reports any Deactivated Facilities which were removed from the Right-of-Way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities. Franchisee shall keep the City reasonably informed of its long-range plans for coordination with the City’s long-range plans.
7.3 **Inspection.** All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; except that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by state or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

7.4 **Public Records Act.**

a. Franchisee acknowledges that information submitted to the City is subject to the Washington Public Records Act, chapter 42.56 RCW, and is open to public inspection, subject to any exceptions permitted by law (i.e., unless an exemption applies).

b. Franchisee may identify documents submitted to the City that Franchisee believes are non-disclosable, such as trade secrets. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under state or federal law. The City agrees
to keep confidential any proprietary or confidential books or records to the extent permitted by law.

c. If the City receives a public records request under chapter 42.56 RCW or similar law for the disclosure of the documents or any part of the documents Franchisee has designated as confidential, trade secret, or proprietary, the City shall provide Franchisee with written notice of the request, including a copy of the request prior to disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 7.4 prohibits the City from complying with chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City will not assert an exemption from disclosure or production on Franchisee’s behalf.

d. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records. If a higher court overturns an injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records within forty-five (45) calendar days of a request from the City, unless additional time is reasonably necessary under the circumstances and is agreed to by the parties.

7.5 Annual Audit. On an annual basis, upon thirty (30) calendar days prior written notice, the City shall have the right to conduct an independent audit of Franchisee’s records reasonably related to the
administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that tax or fee payments have been underpaid by three percent (3%) or more, Franchisee shall pay the total cost of the audit.

**SECTION 8. - Work in the Rights-of-Way.**

8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner and only after obtaining permits pursuant to Section 8.3. Franchisee shall minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper traffic control to warn and direct the road users. Traffic control devices include but are not limited to barricades, traffic cones, traffic drums, tubular markers, flags, certified flaggers, lights, flares, and other measures as required for the safety of all members of the general public. Franchisee shall also comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the requirement of trench safety systems for trench excavations. The provisions of this Section 8.1 shall survive the expiration or termination of this Franchise and during such time as Franchisee continues to have Facilities in the Rights of Way.

8.2 Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair, and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or any interference with City services. The provisions of this Section 8.2 shall survive the expiration of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.
8.3 Whenever Franchisee shall commence work in any Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its Facilities, it shall apply to the City for a permit to do so. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

8.4 If either the City or Franchisee plans to make excavations in any area covered by this Franchise and as described in this Section 8.4, the party planning such excavation shall afford the other an opportunity to share such excavation, PROVIDED THAT:

a. The joint use shall not unreasonably delay the work of the party causing the excavation to be made;
b. The joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
c. The initiating party may deny such request for safety reasons.

8.5 Upon prior written notice from the City, Franchisee shall meet with the City and other franchise holders to schedule and coordinate construction in the Rights-of-Way. To minimize public inconvenience, disruption or damage, the Franchisee shall coordinate all construction locations, activities, and schedules as reasonably directed by the City.

8.6 Franchisee acknowledges that it shall be solely responsible for compliance with all marking and lighting requirements of the FAA and the FCC with respect to Franchisee’s Facilities. Franchisee shall indemnify, defend and hold the City harmless from any fines or other liabilities caused...
by Franchisee’s failure to comply with these requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or Franchisee’s equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may elect any or all of the following remedies: (1) cure the conditions of noncompliance at Franchisee’s expense, and collect all reasonable costs from Franchisee in accordance with the provisions of Section 15.3 and Section 15.4; (2) collect damages pursuant to Section 28.2; or (3) revoke this Franchise pursuant to Section 27. Franchisee shall not be liable for any claims, damages or liability resulting from City’s acts in effecting the cure on behalf of Franchisee.

SECTION 9. - Trees.

9.1 Franchisee may trim trees upon and overhanging on Rights-of-Way, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of any such trees from coming in contact with Franchisee’s Facilities. The right to trim trees in this Section 9.1 only applies to the extent necessary to protect above ground Facilities. Franchisee shall avoid unnecessary trimming of trees and vegetation in the vicinity of its Facilities and shall avoid damaging any trees or vegetation. 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.

9.2 Upon the written request of the Director, Franchisee shall prepare and maintain a tree trimming schedule to ensure compliance with this Section 9.2 and to avoid exigent circumstances where tree cutting, trimming, or removal is necessary to protect the public safety or continuity of service. Franchisee shall submit the tree trimming schedule to the Director. Franchisee shall notify and obtain written approval from the
City, which shall not be unreasonably withheld, delayed or conditioned, before completing any trimming, except in an emergency.

9.3 All tree trimming shall be completed at the expense of Franchisee. Franchisee may contract for such services, however, City approval is required prior to commencing such trimming, which shall not be unreasonably withheld, delayed or conditioned. Nothing in this Franchise 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. Except in an emergency, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Director.

9.4 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 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.

SECTION 10. - One Call Locator Service.

Prior to doing any work in the Rights-of-Way, Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to chapter 19.122 RCW. Further, upon request by the City or a third party, Franchisee shall locate its Facilities consistent with the requirements of chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee’s Facilities or for interruptions in service to Franchisee’s customers that are a direct result of Franchisee’s failure to locate its Facilities within the prescribed time limits and
Section 11. - Safety Requirements.

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

11.2 If an unsafe but non-emergent condition or a violation of Section 11.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the condition. If Franchisee fails to start to make the necessary repairs and alterations within a reasonable time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Sections 15.3 and 15.4.
11.3 Additional safety standards include:

a. Franchisee shall endeavor to maintain all Facilities in an orderly manner, including, but not limited to, the placement of any cables connecting equipment in an orderly manner.

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

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

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

a. Be in writing;

b. Be given to the person doing the work or posted on the work site;

c. Be sent to Franchisee by overnight delivery;

d. Indicate the nature of the alleged violation or unsafe condition; and

e. Establish conditions under which work may be resumed.
SECTION 12. - Work of Contractors and Subcontractors.

Franchisee’s contractors and subcontractors shall be licensed and bonded in accordance with State law and the City’s ordinances, regulations, and requirements. Work by contractors and subcontractors 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 Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

SECTION 13. - Restoration after Construction.

13.1 Franchisee shall repair any damage to the Rights-of-Way, and the property of any third party, after installation, construction, relocation, maintenance, or repair of its Facilities or after abandonment approved pursuant to Section 24, within thirty (30) days following the date of any of these activities at Franchisee’s sole cost and expense. Franchisee shall restore the Rights-of-Way and the surface of the Rights-of-Way to the same or better condition as it was immediately prior to any installation, construction, relocation, maintenance or repair by Franchisee, reasonable wear and tear excepted. Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee. No survey monument may be removed (or replaced) without a professional land surveyor obtaining a permit in advance from the Washington State Department of Natural Resources and submitting a copy of the approved permit to the City. Franchisee shall restore all concrete encased monuments that will be disturbed or displaced by such work to City standards and specifications. The Director shall have final approval of the condition of the Rights-of-Way after repair or restoration by the Franchisee.
13.2 Franchisee agrees to complete all restoration work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted for a period of two (2) years and for undiscovered defects as is standard and customary for this type of work.

13.3 If conditions (e.g., weather) make the complete restoration required under this Section 13 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee’s sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

13.4 If Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way within the reasonable time agreed to by the Public Works Director, or his/her designee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) calendar days of submitting an invoice to Franchisee in accordance with the provisions of Section 15.3 and Section 15.4. In addition, and pursuant to Section 15.3 and 15.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with Section 28.2.

13.5 The provisions of this Section 13 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City’s standards.

14.1 In the event of any emergency in which any of Franchisee’s Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or if Franchisee’s Facilities is otherwise in such a condition as to immediately endanger the property, life, health or safety of any person, entity or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of any person, entity or the City without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits on the next day Kent City Hall is open for business.

14.2 The City retains the right and privilege to cut, move or remove any Small Cell Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency, including the knockdown of a Utility Pole with Small Cell Facilities.

14.3 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the gross negligence or willful acts of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City’s actions under this Section 14 except to the extent caused by the gross negligence or willful acts of the City, its employees, contractors, or agents.
14.4 Whenever the construction, installation or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct Franchisee, at Franchisee’s own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. If the 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, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

14.5 Franchisee shall promptly reimburse the City in accordance with the provisions of Section 15.3 and Section 15.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee’s Facilities, to the extent the emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

SECTION 15. - Recovery of Costs, Taxes and Fees.

15.1 Franchisee shall pay a fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City’s legal costs incurred in drafting and processing
this Franchise. No permits shall be issued for the installation of any Facilities until such time as the City has received payment of this fee.

15.2 Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 15.3.

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

15.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs.
and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in the billing. At the City’s option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City’s itemization of costs, in writing, at the conclusion of each project for information purposes.

15.5 Franchisee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.99.010. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee’s operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

15.6 Franchisee acknowledges that certain of its operations within the City constitute a telecommunication business subject to the utility tax imposed pursuant to chapter 3.18 of the Kent City Code. Franchisee stipulates and agrees that certain of its business activities are subject to taxation as a telecommunication business and that Franchisee shall pay to the City the rate applicable to such taxable services under chapter 3.18 of the Kent City Code, and consistent with state and federal law. The parties agree however, that nothing in this Franchise shall limit the City’s power of taxation as may exist now or as later imposed by the City. This provision does not limit the City’s power to amend chapter 3.18 of the Kent City Code as may be permitted by law.

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

16.2 City Approvals and Permits. The granting of this Franchise is not a substitute for any other City required approvals to construct Franchisee’s Facilities in the Rights-of-Way ("City Approvals"). The parties agree that such City Approvals (except Right-of-Way use permits as described in Section 8.3) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the Rights-of-Way but rather grant Franchisee permission to build its specific Small Cell Facilities. Therefore City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the Codes, state and federal laws governing wireless communication facility siting and shall be in addition to any permits required under Section 8.3. This Section does not affect the thirty (30) day issuance requirement described in RCW 35.99.030 required for use permits such as Right-of-Way use permits and traffic control permits.
SECTION 17. - Design Standards.

17.1 Purpose. The Franchisee acknowledges that the purpose of the Design Standards set forth within this Section 17 is to locate Small Cell Facilities in the City’s Rights-of-Way in a manner that minimizes potential incompatibilities with adjacent uses, limits bulk and minimizes aesthetic impacts.

17.2 Concealment. Franchisee shall construct its Facilities consistent with the concealment or stealth requirements as described or shown in the Kent City Code, any Kent Construction Standards, this Franchise and in the applicable permit(s), in order to minimize the visual impact of such Facilities. The design standards within this Franchise or in a future Franchise Utility Permit, including the dimensions and number of antennas and equipment boxes and the pole height are intended and stipulated to be concealment features when considering whether a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

a. Locations.
   i. Franchisee shall locate Small Cell Facilities on Utility Poles in a location that minimizes the appearance of Small Cell Facilities from existing adjacent residential structures to the maximum extent feasible. For example, Franchisee shall use its best efforts to avoid locations where Facilities would be close to windows, in front of historically or architecturally significant buildings, or in locations where Facilities would disturb views of significance.
   ii. In order to minimize negative visual impact to the surrounding area, the Director may deny a request for a proposed Small Cell Facility where the proposed location is deemed inappropriate due to the extent of existing above
ground wireless telecommunications or other electrical or
cable facilities existing within a one hundred fifty foot (150')
radius of the proposed Small Cell Facility location. The
Director may also deny a request for a proposed Small Cell
Facility on a Utility Pole already containing more than one
electrical transformer.

iii. A Utility Pole shall not contain more than one Small
Cell Facility.

b. **Replacement Utility Poles Height.** The height of any
Replacement Utility Pole including antennas shall be: fifty
(50) feet or less; or not extended to a height of more than
ten percent (10%) above its preexisting height as a result,
whichever is greater.

c. **Small Cell Facilities Design.** Small Cell Facilities shall comply
with the Design Standards set forth within this Section 17
and be in a design substantially similar in aesthetics and
proportion to those pictured in Exhibit A.

i. **Color.** Small Cell Facilities antennas, conduit,
mounting hardware and equipment cabinets shall be painted
a neutral color to match the color of the Utility Pole, or at the
City’s preference, Franchisee shall paint its Small Cell
Facilities any color of the City’s choosing, so long as the paint
is reasonably commercially available.

ii. **Mount.** Small Cell Facilities shall be mounted as closely
to the Utility Pole as possible, and shall not extend out more
than three (3) feet from the pole. Ground mounted
equipment is prohibited.
iii. **No Illumination.** Except as otherwise required by applicable law, Small Cell Facilities shall not be illuminated.

iv. **Concealed Wires.** Small Cell Facilities’ external cables and wires shall be enclosed in a conduit so that wires are protected and not visible or visually minimized to the maximum extent feasible. The number of conduit shall be minimized to the number necessary to accommodate the Small Cell Facility and the conduit shall be mounted as closely to the pole, while still meeting the required safety clearances necessary for the pole to remain climbable. The color of external cables and wires and conduit shall match the color of the Utility Pole or be a neutral color such as black, brown, beige, off-white, or light gray. All cables shall be also be concealed to the extent feasible. Franchisee agrees to require any third party installing cables or wires on its Small Cell Facilities to comply with the requirements in this Section, subject to the approval of the pole owner.

v. **Bulk.**

1. Except as provided below, primary small cell equipment enclosures shall not exceed twelve (12) cubic feet in volume.

2. Multiple antennas are permitted provided that the cumulative total antenna volume shall not exceed twelve (12) cubic feet.

3. If, due to technological reasons, the proposed equipment enclosures do not comply with Section 17.2(c)(v)(1), the Director may approve primary small cell equipment enclosures up to twenty-eight (28) cubic feet in volume following a submission to the Director by the Franchisee demonstrating that Franchisee is proposing to use the smallest small cell
equipment enclosure that is technologically feasible for the specific Small Cell Facility.

vi. **Stickers.** The use of stickers on Utility Poles should be minimized to the extent feasible.

**SECTION 18. - Unauthorized Facilities.**

Any Small Cell Facilities installations in the City Right-of-Way that were not authorized under this Franchise or other required City Approval or were installed substantially out of compliance with the Design Standards in Section 17(c) ("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Franchisee. City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall have thirty (30) calendar days thereafter in which to establish that this installation was authorized or obtain the applicable permit. Failure to establish that the installation is authorized will result in the imposition of an Unauthorized Facilities charge in the amount of One Thousand Dollars ($1,000.00) per Unauthorized Facility per day starting on the thirty-first (31st) day. Franchisee may submit an application to the City under this Franchise for approval of the Unauthorized Facilities. If the application for the Unauthorized Facilities is not approved, Franchisee shall remove the Unauthorized Facilities from the City’s Right-of-Way within thirty (30) calendar days after the expiration of all appeal periods for such denial. The City shall not refund any Unauthorized Facilities charges, unless Franchisee is successful in an appeal. This Franchise remedy is in addition to any other remedy available to the City at law or equity.

**SECTION 19. - Graffiti Abatement.**

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

**SECTION 20. - Emissions Reports.**

20.1 Franchisee is obligated to comply with all laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the Rights-of-Way, including all applicable FCC standards as now or hereafter adopted, whether such RF or EMF presence or exposure results from the Small Cell Facility alone or from the cumulative effect of the Small Cell Facility added to all other sources on or near the specific pole or structure.

20.2 Franchisee must provide to the City a copy of the report (the “Emissions Report”) from a duly qualified engineer analyzing whether RF and EMF emissions at the proposed Small Cell Facility locations would comply with FCC General Population standards. Franchisee may provide one standard Emissions Report which certifies that a standard Small Cell configuration (including power output, elevation of antennas above ground level, number of antennas) complies with FCC standards for its entire deployment, provided that the configuration of its Facilities remains identical ("Master Emissions Report"). Franchisee shall provide multiple Master Emissions Reports if it deploys different configurations within the City. All applications for Small Cells shall certify that the configuration is the same as or emits less emissions than the design in the standard Emissions Report. If an installation differs from the standard report as being more intrusive, then Franchisee will be required to provide a customized Emissions Report for such Small Cell installation. If not provided earlier as part of a Master Emissions Report, Franchisee must submit the Emissions Report to the City with the applicable Small Cell Permit application. Further, following any subsequent modification to a
Small Cell Facility that materially alters the configuration of such Small Cell Facility, Franchisee shall, at its own cost and expense, perform an RF emissions test following such modification to validate that the Small Cell Facilities once modified comply with the FCC standards.

20.3 If the City discovers that the emissions from a Facility exceeds the FCC standards, then the City may order Franchisee to immediately turn off the Facility or portion thereof committing the violation, until the emissions exposure is remedied.

20.4 If Small Cell Facilities have already been installed by the Franchisee or other entities within the vicinity of a proposed Small Cell Facility, Franchisee shall provide an Emissions Report for the proposed Facility that includes the cumulative effects of all of these already existing Facilities.

SECTION 21. - No Interference.

21.1 Interference with Public Facilities. Franchisee’s Small Cell Facilities shall not interfere with any City operations (including, but not limited to, traffic lights, radio systems, or other City communications infrastructure), or PSERN (or its successor entity) communications operation or equipment. If the City reasonably determines that the Small Cell Facilities cause such interference, Franchisee shall respond to the City’s request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours of receipt of written notice. The City may require, by written notice, that Franchisee cease operation of the specific Small Cell Facilities causing such interference and either modify, remove or relocate such Small Cell Facilities. If, within ten (10) calendar days after receipt of such written notice from the City of such interference, Franchisee has not abated such interference, such Small Cell Facility may be deemed an Unauthorized Facility and subject to the provisions of Section 18.
21.2 **Interference with Other Facilities.** Franchisee is solely responsible for determining whether its Small Cell Facilities interfere with telecommunications facilities of utilities and franchisees existing within the Rights-of-Way prior to Franchisee’s installation. Franchisee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its Small Cell Facilities within the Franchise Area. Franchisee, in the performance and exercise of its rights and obligations under this Franchise shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties.

**SECTION 22. - Indemnification.**

22.1 **General Indemnification.** Franchisee shall indemnify, defend, and hold the City, its officers, officials, boards, commissions, agents, and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to person or property, including, without limitation, damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Franchisee, its agents, or its employees, or by reason of any neglect or omission of Franchisee. Franchisee shall consult and cooperate with the City while conducting its defense of the City under this Franchise. Franchisee shall not be obligated to indemnify the City to the extent of the City's negligence or willful misconduct.
22.2 Indemnification for Radio Frequency Emissions or Radiation. Franchisee shall also indemnify, defend and hold harmless the City, its officers, employees, agents, volunteers and representatives from any and all claims, costs, judgments, awards or liability to any person arising from radio frequency emissions or radiation emitted from Franchisee's Facilities located in the Rights-of-Way, regardless of whether Franchisee's equipment complies with applicable federal statutes and/or FCC regulations related thereto. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

22.3 Indemnification for Relocation. Franchisee shall defend, indemnify, and hold the City harmless for any damages, claims, additional costs or reasonable expenses and attorneys' fees, including contractor construction delay damages, assessed against or payable by the City and arising out of or resulting from Franchisee's failure to remove, adjust, or relocate any of its Facilities in the Rights-of-Way in accordance with any relocation required by the City, provided that Franchisee shall not be liable under this section in the event Franchisee's failure to remove, adjust or relocate any of its Facilities is the result of a force majeure event or events beyond the control of Franchisee.

22.4 Avoidance.

a. 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 by Franchisee of any of its obligations under this Section 22.

b. 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 duty of defense and indemnification under this subsection.

22.5 Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall promptly notify Franchisee of such claim or action and tender the defense of the claim or action to Franchisee, which defense shall be at Franchisee’s expense. The City’s failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee’s ability to defend such claim or suit. The City may participate in the defense of a claim, but if Franchisee provides a defense at Franchisee’s expense then Franchisee shall not be liable for any attorneys’ fees, expenses, or other costs the City may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described in Section 22.6 is required. In that event, the provisions of Section 22.6 shall govern Franchisee’s responsibility for City’s attorney’s fees, expenses, or other costs. In any event, Franchisee may not agree to any settlement of claims affecting the City without the City's consent, such consent not to be unreasonable withheld or delayed.

22.6 Payment of fees and costs.

a. If Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City’s reasonable costs for defense of the action, including all expert witness fees, costs, and attorney’s fees, and including costs and fees incurred in recovering under this indemnification provision.
b. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, Franchisee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit, or proceeding subject to indemnification by Franchisee. Provided, however, that in the event that such separate representation is or becomes necessary, and the City desires to hire counsel or any other outside experts or consultants and desires Franchisee to pay those expenses, then the City shall be required to obtain Franchisee’s consent to the engagement of such counsel, experts, or consultants, such consent not to be unreasonably withheld. The City’s expenses shall include all reasonable out of pocket costs and expenses, such as consultants’ fees and court costs, but shall not include outside attorneys’ fees for services that are unnecessarily duplicative of services provided the City by Franchisee, except in the event of a conflict of interest where such duplication may be required. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any claim or action.

22.7 RCW 4.24.115. Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Franchisee and the City, its officers, officials, employees, and volunteers, the Franchisee’s liability hereunder shall be only to the extent of the Franchisee’s negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes
the Franchisee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Franchise.

22.8 Assumption of Risk. Notwithstanding any other provisions of this Section 22, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or the willful or criminal actions of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the gross negligence or any willful misconduct on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

22.9 Survival. The provisions of this Section 22 shall survive the expiration, revocation, or termination of this Franchise.

**SECTION 23. - Insurance.**

23.1 Insurance Limits. Franchisee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:
a. Commercial General Liability insurance with limits of Five Million Dollars ($5,000,000.00) per occurrence and Five Million Dollars ($5,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by the ISO Form CG 00 01 or its equivalent and include severability of interests. Such insurance shall include the City, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable. Coverage may take the form of a primary layer and a secondary or umbrella excess layer, but the combination of layers must equal Five Million Dollars ($5,000,000.00) at a minimum;

b. Commercial Automobile Liability insurance with combined single limits of Five Million Dollars ($5,000,000.00) each occurrence with respect to each of Franchisee’s owned, hired and non-owned vehicles assigned to or used in the operation of the Facilities in the City. The policy shall contain a severability of interests provision;

c. Workers’ Compensation coverage or qualified self insurance as required by the Industrial Insurance laws of the State of Washington and employer’s liability with limits of One Million Dollars ($1,000,000.00) each accident/disease/policy limit.

23.2 Deductibles/Certificate of Insurance. Any deductible of the policies shall not in any way limit Franchisee’s liability to the City.
23.3 **Endorsements.** All required liability policies shall contain, or shall be endorsed so that:

a. The City, its officers, officials, boards, commissions, employees, and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Franchisee under this Franchise or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;

b. Franchisee’s required insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees, and agents shall be in excess of the Franchisee’s required insurance and shall not contribute to it; and

a. Franchisee’s required insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer’s liability.

b. Notwithstanding the forgoing, Licensee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event Licensee elects to self-insure its obligation under this Agreement to include Licensor as an additional insured, the following conditions apply: (i) Licensor shall promptly and no later than sixty (60) calendar days after notice thereof provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Licensee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Licensor shall not settle any such claim, demand, lawsuit, or
the like without the prior written consent of Licensee; and (iii) Licensor shall fully cooperate with Licensee in the defense of the claim, demand, lawsuit, or the like.

23.4 Acceptability of Insurers. The insurance obtained by Franchisee shall be placed with insurers with a Best’s rating of no less than “A minus VII.”

23.5 Verification of Coverage. The Franchisee shall furnish the City with (a) certificates of insurance and (b) the additional insured endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

23.6 Maintenance of Insurance. Franchisee’s maintenance of insurance as required by this Section 23 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City’s recourse to any remedy available at law or equity. Further, Franchisee’s maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

SECTION 24. - Abandonment of Franchisee's Telecommunications Network.

24.1 Where any Facilities or portions of Facilities are no longer needed and their use is to be discontinued, the Franchisee shall immediately report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in Section 7.2. Deactivated Facilities, or portions thereof, shall be completely removed within ninety (90) days and the site, pole or
infrastructure restored to its pre-existing condition, reasonable wear and tear and damage by casualty excepted.

24.2 If Franchisee leases a structure from a landlord and such landlord later abandons the structure, for example by building a replacement structure, Franchisee shall remove or relocate its Facilities as soon as possible but no later than ninety (90) calendar days of such written notification from the landlord, at no cost to the City.

24.3 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) calendar days of receiving written notice from the Director. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee’s Facilities must be first approved by the Public Works Director or his/her designee and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair (reasonable wear and tear and damage by casualty excepted), provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

24.4 Notwithstanding Section 24.3, the City may permit Franchisee’s Facilities to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee’s agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

24.5 Any Facilities which are not removed within one hundred and eighty (180) calendar days of either the date of termination or revocation of this Small Cell Franchise -
Franchise or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 24.5 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon these Facilities in place.

24.6 The provisions of this Section 24 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

SECTION 25. - Bonds.

25.1 Construction Guarantee. As a condition of performing work in the Right-of-Way, the timely, complete, and faithful performance of all construction work in the Right-of-Way shall be guaranteed in an amount equal to one hundred twenty-five percent (125%) of the cost estimate (prepared by a licensed contractor, professional engineer, or architect) of the construction work. The guarantee may be by performance bond or irrevocable letter of credit. If Franchisee, in the sole judgment of the City, has a history of corrections or defaults, Franchisee must provide the full guarantee by assignment of funds. These funds shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work that could be asserted against the City or City property. The guarantee must remain in full force until the completion of
construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a maintenance bond as described in Section 25.2. Compliance with the performance guarantee requirement of the City’s current Design and Construction Standards shall satisfy the provisions of this Section 25.1.

25.2 Maintenance Bond. Maintenance and the successful operation of the Right-of-Way improvements shall be bonded for a period of at least two (2) years (or other period as required by Kent City Code) from the date of final construction approval. The bond shall be in an amount to be determined by the City. The minimum maintenance guarantee shall be Five Thousand Dollars ($5,000.00) or twenty percent (20%) of the original performance construction guarantee as described in Section 25.1, whichever is greater. At six (6)-month intervals during this maintenance period, the City will inspect the improvements and identify to Franchisee any noted deficiencies. Franchisee will have thirty (30) days to correct any deficiencies. The satisfactory correction of the work may commence a new two (2)-year maintenance period for the improvements as corrected, as determined by the City. The City will initiate collection against the financial guarantee if deficiencies are not satisfactorily addressed by the end of the thirty (30)-day response period. Compliance with the maintenance guarantee requirement of the City’s current Design and Construction Standards shall satisfy the provisions of this Section 25.2.

Original financial guarantee amounts described in Section 25.1 and Section 25.2 above may be reduced one time only prior to the maintenance period, at the discretion of the City. If an extension to any associated permits are granted, the financial guarantees may be increased based on an updated engineer’s cost estimate or as determined by the City. Financial guarantees will be fully released only after all final punch list items are accomplished, final construction approval, and the elapse of
the two (2)-year maintenance guarantee period with all corrective actions complete and accepted by the City.

25.3 Franchise Bond. Franchisee shall provide the City with a bond in the amount of Twenty-Five Thousand Dollars ($25,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to the City. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, following written notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by the City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of Facilities. Franchisee specifically agrees that its failure to comply with the terms of this Section 25 shall constitute a material breach of this Franchise, subject to the notice and cure provisions of Section 28. Franchisee further agrees to replenish the Franchise Bond within fourteen (14) calendar days after written notice from the City that there is a deficiency in the amount of the Franchise Bond. The amount of the Franchise Bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

25.4 Form of Bonds. All bonds provided to the City under this Section 25 shall be on a form provided by the City and with sureties registered with the Washington State Insurance Commissioner or other financial institutions acceptable to the City.

SECTION 26. - Modification.

The City and Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.
SECTION 27. - Revocation.

If Franchisee willfully violates or fails to comply with any material provisions of this Franchise, then at the election of the City Council after at least thirty (30) calendar days written notice to Franchisee specifying the alleged violation or failure, or such extended periods as may be required beyond the thirty (30) day cure period to cure any violation if the nature of the cure is such that it reasonably requires more than thirty (30) days to cure, the City may revoke all rights conferred and this Franchise may be revoked by the City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) calendar days after the hearing, the City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the City Council does not grant any additional period, the City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

SECTION 28. - Remedies to Enforce Compliance.

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

28.2 If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) calendar days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, the City may, at its sole discretion, (1) revoke this Franchise with no further notification, or (2) claim damages of Two Hundred Fifty Dollars ($250.00) per day against the Franchise Bond set forth in Section 25.3, or (3) pursue other remedies as described in this Section 28. Liquidated damages described in this Section 28.2 shall not be offset against any sums due to the City as a tax or reimbursement pursuant to Section 15.6.
SECTION 29. - Non-Waiver.

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

SECTION 30. - Police Powers and City Ordinances.

Nothing herein shall be deemed to restrict the City’s ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City’s police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

SECTION 31. - Cost of Publication.

The cost of publication of this Franchise shall be borne by Franchisee.

SECTION 32. - Acceptance.

Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as Exhibit B. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 23, any Construction Guarantee, if applicable, pursuant to Section 25.1 and the Franchise Bond
required pursuant to Section 25.3. The administrative fee pursuant to Section 15.1 is due within thirty (30) days of receipt of the invoice from the City.

SECTION 33. - Survival.

All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 13, Section 22, and Section 24 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City’s Franchise to Franchisee for the use of the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, 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 where Franchisee is named herein.

SECTION 34. - Assignment.

34.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless approved in writing by the City, which approval shall not be unreasonably withheld, conditioned or delayed. The above notwithstanding, Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 34, no assignment or transfer
of this Franchise shall be deemed to occur based on the public trading of Franchisee’s stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

Any transactions which singularly or collectively result in a change of fifty percent (50%) or more of the ownership or working control (for example, management of Franchisee or its Telecommunications facilities) of the Franchisee or of the ownership or working control of the Franchisee's Telecommunications facilities within the City, or of the ownership or working control having ownership or working control of the Franchisee or of the Franchisee's Telecommunications facilities within the City, or of control of the capacity or bandwidth of the Franchisee's Telecommunication facilities within the City, shall be considered an assignment or transfer requiring notice to the City pursuant to this Franchise. Such transactions between affiliated entities are not exempt from notice requirements. A Franchisee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee within sixty (60) days following the closing of the transaction.

34.2 Franchisee’s obligation to remain fully responsible for compliance with the terms under this Section 34 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

SECTION 35. - Extension.

If this Franchise expires without renewal, the City may, subject to applicable law either allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or order the removal of any and all Facilities at Franchisee’s sole cost and expense consistent with Section 24.3.
**SECTION 36.** - *Entire Agreement.*

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

**SECTION 37.** - *Eminent Domain.*

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

**SECTION 38.** - *Vacation.*

If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than sixty (60) calendar days before vacating all or any portion of any such area. The City may, after sixty (60) calendar days’ written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

**SECTION 39.** - *Notice.*

Any Notice or information required or permitted to be given to the parties under this Franchise agreement may be sent to the following addresses unless otherwise specified:
<table>
<thead>
<tr>
<th>If to Licensee (including invoices):</th>
<th>If to Licensor:</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Cingular Wireless PCS, LLC</td>
<td>CITY OF KENT</td>
</tr>
<tr>
<td>Attn: Tower Asset Group - Lease</td>
<td>Attn: City Clerk</td>
</tr>
<tr>
<td>Administration</td>
<td>220 Fourth Avenue South</td>
</tr>
<tr>
<td>Re: Wireless Installation on Public</td>
<td>Kent, WA 98032</td>
</tr>
<tr>
<td>Structures</td>
<td>(City of Kent)</td>
</tr>
<tr>
<td>(City of Kent) (WA)</td>
<td>(City of Kent)</td>
</tr>
<tr>
<td>FA No.:</td>
<td>(WA)</td>
</tr>
<tr>
<td>575 Morosgo Drive NE</td>
<td>FA No.</td>
</tr>
<tr>
<td>Atlanta, GA 30324</td>
<td>(City of Kent)</td>
</tr>
<tr>
<td></td>
<td>(WA)</td>
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<tr>
<td>With a copy to the AT&amp;T Legal</td>
<td></td>
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<tr>
<td>Department:</td>
<td></td>
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<tr>
<td>New Cingular Wireless PCS, LLC</td>
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<tr>
<td>Attn: AT&amp;T Legal Dept. - Network</td>
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<tr>
<td>Operations</td>
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<td>Re: Wireless Installation on Public</td>
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<td>Structures</td>
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<td>(City of Kent) (WA)</td>
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<tr>
<td>208 S. Akard Street</td>
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<tr>
<td>Dallas, TX 75202-4206</td>
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</tbody>
</table>

**SECTION 40. - Severability.**

If any section, sentence, clause or phrase of this Franchise 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 Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court’s ruling.

**SECTION 41. - Compliance with All Applicable Laws.**

Franchisee agrees to comply with all present and future federal, state and local laws, ordinances, rules and regulations, except to the extent that the
Franchisee has a vested right in accordance with the vested rights doctrine under Washington case law or as codified at RCW 19.27.095. This Franchise is subject to ordinances of general applicability enacted pursuant to the City’s police powers. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation upon providing Franchisee with thirty (30) calendar days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, City may enact the proposed amendment, by incorporating Franchisee’s concerns to the maximum extent City deems possible.

SECTION 42. - Attorneys’ Fees.

If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys’ fees, costs, expenses and attorneys’ fees upon appeal of any judgment or ruling.
SECTION 43. - Hazardous Substances.

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

SECTION 44. - Licenses, Fees and Taxes.

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

SECTION 45. - Miscellaneous.

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

45.2 This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall
be the United States District Court for the Western District of Washington, or King County Superior Court, without waiver of any right to removal.

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

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

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

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

SECTION 46. - Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 47. - Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

SECTION 48. - Effective Date. This ordinance shall take effect and be in force thirty days from and after its passage, as provided by law.
DANA RALPH, MAYOR

February 5, 2019
Date Approved

ATTEST:

February 5, 2019
Date Adopted

KIMBERLEY A. KOMOTO, CITY CLERK

February 8, 2019
Date Published

APPROVED AS TO FORM:

ARTHUR “PAT” FITZPATRICK, CITY ATTORNEY
EXHIBIT A
REPRESENTATIVE PHOTO SIMULATIONS OF SMALL CELL FACILITIES
PROPOSED ANTENNA MOUNTED ON TOP OF EXISTING WOOD UTILITY POLE

PROPOSED ANTENNA MOUNT

PROPOSED POWER AND FIBER CONDUITS

PROPOSED POLE MOUNTED RADIO EQUIPMENT ENCLOSURE (MICRO)

PROPOSED POLE MOUNTED DISCONNECT
EXHIBIT B

STATEMENT OF ACCEPTANCE

New Cingular Wireless PCS, LLC, a Delaware limited liability company, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

By: Wayne Wooten

Name: Wayne Wooten
Title: Director

Date: 3-26-19

STATE OF ___________
COUNTY OF ___________

On this __________ day of __________, 2019, before me the undersigned, a Notary Public in and for the State of __________, duly commissioned and sworn, personally appeared, WAYNE WOOTEN, of New Cingular Wireless PCS, LLC, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinafoe set forth.

Signature

Notary Public in and for the State of __________, residing at __________

MY COMMISSION EXPIRES: 5-11-20