

City of Tukwila

Washington

Ordinance No. 2568

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO SEATTLE SMSA LIMITED PARTNERSHIP, A DELAWARE LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS, LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A TELECOMMUNICATIONS SYSTEM IN THE PUBLIC RIGHTS-OF-WAY IN THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless, hereinafter referred to as "VERIZON" is a telecommunications company that, among other things, provides personal wireless services to customers in the Puget Sound region; and

WHEREAS, VERIZON's desired route through the City of Tukwila, hereinafter referred to as "City," requires the use of certain portions of City rights-of-way for the installation, operation and maintenance of a telecommunications system; and

WHEREAS, the City Council has determined that the use of portions of the City's rights-of-way for installation of a telecommunications system is appropriate from the standpoint of the benefits to be derived by local business and the region as a result of such services; and

WHEREAS, the City Council also recognizes that the use of public rights-of-way must be restricted to allow for the construction of amenities necessary to serve the future needs of the citizens of Tukwila and that the coordination, planning and management of the City's rights-of-way is necessary to ensure that the burden of costs for the operations of non-municipal interests are not borne by the citizenry; and

WHEREAS, the Revised Code of Washington (RCW) authorizes the City to grant and regulate non-exclusive franchises for the use of public streets, rights-of-way and other public property for installation, operation and maintenance of communications facilities;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Definitions.

A. For the purposes of this Franchise Agreement and the Exhibit attached hereto, the following terms, words, phrases, and their derivations where capitalized shall have the meanings given herein. Terms not defined herein shall have the meaning given in Title 11 of the Tukwila Municipal Code. Terms not defined herein or in Title 11 of the Tukwila Municipal Code shall have the meaning given pursuant to such federal statutes, rules, or regulations that apply to and regulate the services provided by VERIZON. Words not otherwise defined shall be given their common and ordinary meaning.

B. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word “shall” is always mandatory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.

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

2. **“Construct”** shall mean to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, replace, repair, monitor, maintain, use, relocate, remove, or support.

3. **“Default”** shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise that is not cured within 30 days after receipt of written notice from the non-defaulting Party.

4. **“Design Document(s)”** shall mean the plans and specifications for the construction of the Facilities meeting the minimum applicable general plan submittal requirements for engineering services plan review as set forth in the City’s Infrastructure Design and Construction Standards Manual (the “Standards”), illustrating and describing the refinement of the design of the Telecommunications System Facilities to be Constructed, establishing the scope, relationship, forms, size and appearance of the Facilities by means of plans, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

5. **“Dispute”** shall mean a question or controversy that arises between the Parties concerning the observance, performance, interpretation or implementation of any of the terms, provisions, or conditions contained in this Franchise Agreement or the rights or obligations of either Party under this Franchise Agreement.

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

7. **“Facility or Facilities”** means any part or all of the facilities, equipment and appurtenances of VERIZON whether underground or overhead and located within the Public Rights-of-Way as part of VERIZON’s Telecommunications System, including but not limited to, conduit, case, pipe, line, fiber, cabling, equipment, equipment cabinets and shelters, vaults, generators, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, anchors, transmitters, receivers, antennas, and signage.

8. **“Franchise”** shall mean the grant, once accepted, giving general permission to VERIZON to enter into and upon the Public Rights-of-Way to use and occupy the same for the purposes authorized herein, all pursuant and subject to the terms and conditions as set forth herein.

9. **“Law(s)”** shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, environmental standards, orders, decrees and requirements of all federal, state, and local governments, the departments, bureaus, or commissions thereof, or other governmental authorities, including the City acting in its governmental capacity. References to Laws shall be interpreted broadly to cover government actions, however nominated.

10. **“Party(ies)”** shall mean either the City or VERIZON or both.

11. **“Permit”** means a permit issued under the regulatory authority of the City that provides specific requirements and conditions for Work to Construct Facilities within the Public Rights-of-Way and includes, but is not limited to: a construction permit, building permit, street excavation permit, barricade permit, and clearing and grading permit.

12. **“Person”** means and includes any individual, corporation, partnership, association, joint-stock company, limited liability company, political subdivision, public corporation, taxing district, trust, or any other legal entity, but not the City or any Person under contract with the City to perform work in the Public Rights-of-Way.

13. **“Public Right(s)-of-Way”** shall mean 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 or other public right-of-way, including any easement now or hereafter held by the City within the corporate boundaries of the City as now or hereafter constituted for the purpose of public travel, and over which the City has authority to grant permits, licenses, or franchises for use thereof, or has regulatory authority to thereover, excluding: railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, and excluding such similar facilities or property owned, maintained, or leased by the City in its proprietary capacity or as an operator of a utility.

14. **“Public Works Director”** shall mean the Public Works Director for the City or their designee, or such officer or person who has been assigned the duties of Public Works Director or their designee.

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

16. **“Telecommunications System”** shall mean all necessary Facilities to establish a small cell network located in, under, and above City owned Public Right(s)-of-Way for the provision of personal wireless services, including: commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. “Telecommunications System” shall not mean or include Facilities owned or used by VERIZON for the provision of cable television services, video programming, or services other than personal wireless services, including ownership and/or operation of a dark fiber network.

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

Section 2. Non-exclusive Franchise Granted.

A. The City hereby grants to VERIZON, subject to the conditions prescribed in this ordinance ("Franchise Agreement"), the franchise rights and authority to Construct and operate its Facilities necessary for a Telecommunications System within all City-owned Public Rights-of-Way, generally described as that area within the present and future boundaries of the City and hereinafter referred to as the "Franchise Area".

B. The foregoing franchise rights and authority ("Franchise") shall not be deemed to be exclusive to VERIZON and shall in no way prohibit or limit the City's ability to grant other franchises, permits, or rights along, over or under the areas to which this Franchise has been granted to VERIZON; provided, that such other franchises do not unreasonably interfere with VERIZON's exercise of franchise rights granted herein as determined by the City. This Franchise shall in no way interfere with existing utilities or in any way limit, prohibit or prevent the City from using the Franchise Area or affect the City's jurisdiction over such area in any way.

C. This Franchise Agreement merely authorizes VERIZON to occupy and use the Franchise Area. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Franchise Area to VERIZON.

D. The City does not warrant its title or property interest in or to any franchise area nor undertake to defend VERIZON in the peaceable possession or use of the franchise area. No covenant of quiet enjoyment is made.

Section 3. Authority. The Director of Public Works or his or her designee is hereby granted the authority to administer and enforce the terms and provisions of this Franchise Agreement and may develop such lawful and reasonable rules, policies and procedures as he or she deems necessary to carry out the provisions contained herein.

Section 4. Franchise Term. The franchise rights granted herein shall remain in full force and effect for a period of 10 years from the effective date of this ordinance. However, this Franchise Agreement shall not take effect and VERIZON shall have no rights under this Franchise Agreement unless a written acceptance with the City is received pursuant to Section 5 of this Agreement. If VERIZON desires to renew this Franchise Agreement, it shall file a renewal application with the City between 180 days and 120 days prior to the expiration of the existing term. In the event of such filing, the City may extend the term of this Franchise Agreement for up to one year beyond the expiration date to allow processing of renewal. If the City elects to extend the term of this Franchise, written notice of the extension shall be provided to VERIZON prior to the Franchise expiration date.

Section 5. Acceptance of Terms and Conditions. The full acceptance of this Franchise Agreement and all the terms and conditions shall be filed with the City Clerk within 30 days of the effective date of this ordinance in the form attached hereto as Exhibit A. Failure on the part of VERIZON to file said consent within 30 days of the effective date of this ordinance shall void and nullify any and all rights granted under this Franchise Agreement.

Section 6. Construction Provisions and Standards. The following provisions shall be considered mandatory and failure to abide by any conditions described herein shall be deemed as non-compliance with the terms of this Franchise Agreement and may result in some or all of the penalties specified in Section 7.

1. **Permit Required.** No construction, maintenance, or repairs (except for emergency repairs) shall be undertaken in the Franchise Area without first obtaining appropriate Permits from the City of Tukwila. In case of an emergency, VERIZON shall, within 24 hours of the emergency, obtain a Permit from the City of Tukwila's Public Works Department.

2. **Coordination.** All capital construction projects performed by VERIZON within the Franchise Area shall be inspected by a City inspector. All work and inspection shall be coordinated with the Engineering Division of the Public Works Department to ensure consistency with City infrastructure, future Capital Improvement Projects, all developer improvements, and pertinent codes and ordinances in effect on the date the permits and authorizations are issued for the affected Facilities.

3. **Notice to the Public.** Except in the case of an Emergency, the City retains the right to require VERIZON to notify the public prior to commencing any significant planned Construction that VERIZON reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

4. **Use of Public Rights-of-Way.** Within parameters related to the City's role in protecting the public health, safety, and welfare and except as may be otherwise preempted by Law, the City may require that Facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to the proposed Franchise Area and may deny access if VERIZON is not willing to comply with such requirements; and, may require removal of any Facility that is not installed in

compliance with the Standards provided in this Franchise Agreement or which is installed without prior City approval of the time, place, or manner of installation.

5. **Construction Standards.** Any construction, installation, maintenance, and restoration activities performed by or for VERIZON within the Franchise Area shall be constructed and located so as to produce the least amount of interference with the free passage of pedestrian and vehicular traffic and the rights and reasonable convenience of property owners, businesses, and residents along the Public Rights-of-Way. All construction, installation, maintenance and restoration activities shall be conducted such that they conform to the City's development guidelines and standards in effect on the date the permits and authorizations are issued for the affected Facilities and comply with Title 11 of the Tukwila Municipal Code. VERIZON's Facilities shall be designed, located, aligned, and constructed so as not to disturb or impair the use or operation of any street improvements, utilities, and related facilities of the City or the City's existing lessees, licensees, permittees, franchisees, easement beneficiaries or lien holders, without prior written consent of the City or the parties whose improvements are interfered with and whose consent is required pursuant to agreements with the City existing prior to the effective date.

6. **Duty to Restore.**

a. VERIZON shall, after completion of construction of any part of its Telecommunications System, leave the Public Rights-of-Way and other property disturbed nearby in as good or better condition in all respects as it was in before the commencement of such Construction. VERIZON agrees to promptly complete restoration work to the reasonable satisfaction of the City and in conformance with City Standards.

b. If VERIZON's Work causes unplanned, unapproved, or unanticipated disturbance or alteration or damage to Public Rights-of-Way or other public property, VERIZON shall promptly remove any obstructions therefrom and restore such Public Rights-of-Way and public property to the satisfaction of the City and in accordance with City Standards.

c. If weather or other conditions do not allow the complete restoration required, VERIZON shall temporarily restore the affected Public Right-of-Way or public property. VERIZON shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

7. **Notice.** If VERIZON's Work causes unplanned, unapproved, or unanticipated disturbance or damage to Public Rights-of-Way or other public or private property, VERIZON shall promptly notify the property owner within 24 hours.

8. **Warranty.** VERIZON shall warrant any restoration work performed by VERIZON in the Public Rights-of-Way or on other public property for 2 years, unless a longer period is required by applicable City Standards. If restoration is not satisfactorily and timely performed by VERIZON, the City may, after 30 days prior notice to VERIZON, or without notice where the disturbance or damage may create an imminent

risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from VERIZON. Within 30 days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, VERIZON shall pay the City.

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

10. **Stop Work.** On written notice from the City that any Work does not comply with the Franchise Agreement, the approved Design Documents for the Work, the Standards, or other applicable Law, or is being performed in an unsafe or dangerous manner as reasonably determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be in writing, given to the Person doing the Work and be posted on the Work site, indicate the nature of the alleged violation or unsafe condition and establish conditions under which Work may be resumed. If so ordered, VERIZON shall cease and shall cause its contractors and subcontractors to cease such activity until the City is satisfied that VERIZON is in compliance. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable Law, may order VERIZON to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes in its discretion. The City has the right to inspect, repair, and correct the unsafe condition if VERIZON fails to do so, and to reasonably charge VERIZON for the costs incurred to perform such inspection, repair, or correction. Payment by VERIZON will be made within 30 days following receipt of written notice including itemized invoice and supporting documentation evidencing such cost. The authority and remedy set forth herein in this section is in addition to, and not a substitute for, any authority the City may otherwise have to take enforcement action for violation of City codes or Standards.

11. **Alteration.** Except as may be shown in the Design Documents approved by the City or the records drawings, or as may be necessary to respond to an Emergency, VERIZON and VERIZON's contractors and subcontractors may not make any material alterations to the Franchise Area without the City's prior consent, which consent shall not be unreasonably withheld, delayed, or conditioned. The parties acknowledge that nothing in this agreement limits the City's rights under applicable federal, state, and local laws to regulate the placement and appearance of VERIZON's Facilities in the Franchise Area. Material alteration and/or deviation shall include, but not be limited to: a change in the dimension or height or location or placement of the Facilities. If VERIZON desires to change either the location of any Facilities or otherwise materially deviates from the approved design of any of the Facilities, VERIZON shall submit such change to the City in writing for its approval. VERIZON shall have no right to commence any such alteration or deviation until after VERIZON has received the City's approval of such change in writing. Under no circumstance shall VERIZON permanently affix anything in the Franchise Area that inconveniences the public use of the right of way or adversely affects the public health, safety, or welfare.

12. Underground Installation Required. All telecommunications cables and junction boxes or other vaulted system components shall be installed underground consistent with the requirements of Tukwila Municipal Code Section 11.32.090(B), unless otherwise exempted from this requirement, in writing, by the Public Works Director provided, however, this requirement shall not apply to the Facilities that are required to remain above ground in order to be functional.

13. Relocation.

a. The City shall have the right to require VERIZON to alter, adjust, relocate, re-attach, secure, or protect in place its Facilities within the public right-of-way when reasonably necessary for construction, alteration, repair, or improvement of any portion of the public rights-of-way for purposes of public welfare, health, or safety ("Public Improvements"). Such Public Improvements include, but are not limited to: public rights-of-way construction; public rights-of-way repair (including resurfacing or widening); change of public rights-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, communication lines, or any other type of government-owned communications, utility, or public transportation systems, public work, public facility, or improvement of any government-owned utility; public rights-of-way vacation, and the construction of any public improvement or structure by any governmental agency acting in a governmental capacity. In the event the City requires VERIZON to relocate its Facilities, the City shall provide VERIZON with written notice requesting such relocation, along with plans for the public improvement that are sufficiently complete to allow for the initial evaluation, coordination and the development of a relocation plan. The City and VERIZON shall meet at a time and location determined by the City to discuss the project requirements including critical timelines, schedules, construction standards, utility conflicts, as-built requirements, and other pertinent relocation plan details. The City shall notify VERIZON as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of emergency such notice shall be no less than 90 days.

b. To ensure timely execution of relocation requirements, VERIZON shall, upon written request from the City, provide at VERIZON's expense, base maps, current as-built information, detailed relocation plan (including detailed schedule of relocation activities, identification of critical path, identification of Facilities, and relocation procedures), and other design, technical or operational requirements within the time frame specified by the City.

c. VERIZON may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation within the time specified by the City. Such alternatives shall include the use and operation of temporary Facilities in adjacent rights-of-way. The City shall evaluate such alternatives and advise VERIZON in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If requested by the City, VERIZON shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by VERIZON full and fair consideration. In the event the City, in its sole discretion, decides not to

accept the alternatives suggested by VERIZON, VERIZON shall relocate its Facilities as otherwise specified in Section 6, subparagraph 5.

d. Upon final approval of the relocation plan by the City, VERIZON shall, at its own expense, unless otherwise prohibited by statute, and at the time frame specified by the City, temporarily or permanently remove, relocate, place underground, change, or alter the position of any Facilities or structures within the right-of-way whenever the City has determined that such removal, relocation, undergrounding, change or alteration is reasonably necessary for the construction, repair, maintenance, installation, public safety, or operation of any public improvement in or upon the rights-of-way. In the event relocation is required by reason of construction by a third party, non-governmental entity, for the sole benefit of the third party, non-governmental entity then VERIZON's relocation costs shall be borne by the third party.

e. If during the construction, repair, or maintenance of the City's public improvement project an unexpected conflict occurs from VERIZON's Facilities, VERIZON shall, upon notification from the City, respond within 24 hours to resolve the conflict.

f. VERIZON acknowledges and understands that any delay by VERIZON in performing the work to alter, adjust, relocate, or protect in place its Facilities within the public rights-of-way may delay, hinder, or interfere with the work performed by the City and its contractors and subcontractors in furtherance of construction, alteration, repair, or improvement of the public rights-of-way, and result in damage to the City, including but not limited to, delay claims. VERIZON shall cooperate with the City and its contractors and subcontractors to coordinate such relocation work to accommodate the public improvement project and project schedules to avoid delay, hindrance of, or interference with such project.

g. Should VERIZON fail, within 30 days of receipt of written notice from the City, to alter, adjust, protect in place or relocate any Facilities ordered by the City to be altered, adjusted, protected in place, or relocated, within the time prescribed by the City, given the nature and extent of the work, or if it is not done to the City's reasonable satisfaction, the City may, to the extent the City may lawfully do so, cause such work to be done and bill the reasonable cost of the work to VERIZON, including all reasonable costs and expenses incurred by the City due to VERIZON's delay. In such event, the City shall not be liable for any damage to any portion of VERIZON's system. In addition to any other indemnity set forth in this Franchise Agreement, VERIZON will indemnify, hold harmless, and pay the costs of defending the City from and against any and all claims, suits, actions, damages, or liabilities for delays on public improvement construction projects caused by or arising out of the failure of VERIZON to adjust, modify, protect in place, or relocate its Facilities in a timely manner; provided that, VERIZON shall not be responsible for damages due to delays caused by the City.

14. **Removal or Abandonment.** Upon the removal from service of any service antennas or other associated structures, Facilities and amenities, VERIZON shall comply with all applicable standards and requirements prescribed by the City of Tukwila's Public Works Department for the removal or abandonment of said structures and Facilities. No facility constructed or owned by VERIZON shall be abandoned without the express written consent of the City.

15. **Bond.** Before undertaking any of the work, installation, improvements, construction, repair, relocation, or maintenance authorized by this Franchise Agreement, VERIZON shall, upon the request of the City, furnish one bond executed by VERIZON for all of its Facilities in the City's rights-of-way, in such sum as may be set and approved by the City as sufficient to ensure performance of VERIZON's obligations under this Franchise Agreement, provided, however, that such sum shall not exceed 150% of the cost of the Telecommunications System to be installed by VERIZON in the City rights-of-way. At VERIZON's sole option, VERIZON may provide alternate security in the form of an assignment of funds or a letter of credit, in the same amount as the bond. All forms of security shall be in the form reasonably acceptable to the City. The bond shall be conditioned so that VERIZON shall observe all the covenants, terms, and conditions and shall faithfully perform all of the obligations of this Franchise Agreement, and to repair or replace any defective VERIZON work or materials discovered in the City's roads, streets, or property.

16. **"One-Call" Location and Liability.** VERIZON shall subscribe to and maintain membership in the regional "One-Call" utility location service and shall promptly locate all of its lines upon request. The City shall not be liable for any damages to VERIZON's system components or for interruptions in service to VERIZON customers which are a direct result of work performed for any City project for which VERIZON has failed to properly locate its lines and Facilities within the prescribed time limits and guidelines established by One-Call. The City shall also not be liable for any damages to the VERIZON system components or for interruptions in service to VERIZON customers resulting from work performed under a permit issued by the City.

17. **As-Built Plans Required.** VERIZON shall maintain accurate engineering plans and details of all installations within the City limits and shall provide, at no cost to the City, such information in both paper form and electronic form using the most current AutoCAD version prior to close-out of any permits issued by the City and any work undertaken by VERIZON pursuant to this Franchise Agreement. The City shall reasonably determine the acceptability of any as-built submittals provided under this section.

18. **Recovery of Costs.** VERIZON shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise Agreement or under ordinances of the City in effect on the date the permits and authorizations are issued for the affected Facilities. Where the City incurs reasonable costs and expenses for review or inspection of activities undertaken through the authority granted in this Franchise Agreement or any ordinances relating to the subject for which permit fees have not been established, VERIZON shall pay such reasonable costs and expenses directly to the City.

19. **Taxes.** Nothing contained in this Franchise Agreement shall exempt VERIZON's obligation to pay any applicable utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property owned by VERIZON within the City, or against any local improvement assessment imposed on VERIZON. Any fees, charges, and/or fines provided for in the City Municipal Code or any other City ordinance, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed, or due from VERIZON.

20. **Vacation.** If, at any time, the City shall vacate any City road, right-of-way or other City property which is subject to rights granted by this Franchise Agreement and said vacation shall be for the purpose of acquiring the fee or other property interest in said road, right-of-way or other City property for the use of the City, in either its proprietary or governmental capacity, then the City may, at its option and by giving 60-days written notice to VERIZON, terminate this Franchise Agreement with reference to such City road, right-of-way or other City property so vacated, and the City shall not be liable for any damages or loss to VERIZON by reason of such termination other than those provided for in RCW 35.99.

Section 7. Franchise Compliance.

A. **Franchise Violations.** The failure by VERIZON to fully comply with any of the provisions of this Franchise Agreement may result in a written notice from the City that describes the violations of the Franchise Agreement and requests remedial action within 60 days of receipt of such notice. If VERIZON has not attained full compliance at the end of the 60-day period following receipt of the violation notification, the City may declare an immediate termination of all franchise rights and privileges, provided that full compliance was reasonably possible within that 60-day period.

B. Emergency Actions.

1. If any of VERIZON's actions under this Franchise Agreement, or any failure by VERIZON to act to correct a situation caused by VERIZON, is reasonably deemed by the City to create a threat to life or property, financial harm, or cause a delay of the construction, repair or maintenance of the public improvement, the City may order VERIZON to immediately correct said threat, financial harm, or delay or, at the City's discretion, the City may undertake measures to correct said threat, financial harm or delay itself; provided that, when possible, the City shall notify VERIZON in writing and give VERIZON an opportunity to correct within a specified time said threat, financial harm or delay before undertaking such corrective measures. VERIZON shall be liable for all reasonable costs, expenses and damages attributed to the correction of such an emergency situation as undertaken by the City to the extent that such situation was caused by VERIZON and shall further be liable for all reasonable costs, expenses and damages resulting to the City from such situation and any reimbursement of such costs to the City shall be made within 30 days of written notice of the completion of such action or determination of damages by the City. The failure by VERIZON to take appropriate action to correct a situation caused by VERIZON and identified by the City as a threat to public or private safety or property, financial harm, or delay of the

construction, repair or maintenance of the public improvement shall be considered a violation of the terms of this Franchise Agreement.

2. If, during construction or maintenance of VERIZON's Facilities, any damage occurs to an underground facility and the damage results in the release of natural gas or other hazardous substance or potentially endangers life, health or property, VERIZON or its contractor shall immediately call 911 or other local emergency response number.

C. **Other Remedies.** Nothing contained in this Franchise Agreement shall limit the City's available remedies in the event of VERIZON's failure to comply with the provisions of this Franchise Agreement, to include but not limited to, the City's right to a lawsuit for specific performance and/or damages.

D. **Removal of System.** In the event this Franchise Agreement is terminated as a result of violations of the terms of this Franchise Agreement, VERIZON shall, at its sole expense, remove all system components and Facilities within 60 days of such termination, provided that the City, at its sole option, may allow VERIZON to abandon its Facilities in place.

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

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

Section 8. Insurance.

A. VERIZON shall maintain Commercial General liability insurance during the full term of this Franchise Agreement for bodily injury (including death) and property damages. The limit of liability shall be a combined single limit in the amount of \$2,000,000 for each occurrence and \$2,000,000 general aggregate.

B. Such insurance shall include as additional insured, the City, its officers, officials, and employees as their interest may appear under this Franchise Agreement, excluding worker's compensation and employer's liability; shall apply as primary insurance; and shall stipulate that no insurance affected by the City will be called on to contribute to a loss covered thereunder. Upon receipt of notice from its insurer(s) that any insurance required by this Franchise Agreement will be cancelled or will not be renewed, and VERIZON will not replace such insurance with coverage as required by this Franchise Agreement, VERIZON shall provide the City with 30 days prior written

notice of such cancellation. Notice shall be provided as required by Section 12 below. Should the City receive such notice, at City's discretion, the City may send a notice of default to VERIZON allowing VERIZON 15 days to cure its failure to maintain insurance as required by this Franchise Agreement. If VERIZON fails to cure the default within such 15-day period, the City may unilaterally terminate this Franchise Agreement by sending a written notice of termination to VERIZON.

C. VERIZON's contractors and subcontractors performing Work in the Public Rights-of-Way shall comply with such bond, indemnity, and insurance requirements as may be required by City code or regulations, or other applicable Law. Any contractors or subcontractors performing Work within the Public Rights-of-Way on behalf of VERIZON shall be deemed servants and agents of VERIZON for the purposes of this Franchise Agreement and are subject to the same restrictions, limitations, and conditions as if the Work were performed by VERIZON. VERIZON shall be responsible for all Work performed by its contractors and subcontractors and others performing Work on its behalf as if the Work were performed by it, and shall ensure that all such Work is performed in compliance with this Franchise Agreement and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is VERIZON's responsibility to ensure that contractors, subcontractors, or other Persons performing Work on VERIZON's behalf are familiar with the requirements of this Franchise Agreement and other applicable Laws governing the Work performed by them.

Section 9. Other Permits and Approvals. Nothing in this Agreement shall relieve VERIZON from any obligation to obtain approvals or necessary permits from applicable federal, state, and City authorities for all activities in the Franchise Area.

Section 10. Transfer of Ownership.

A. The rights, privileges, benefits, title, or interest provided by this Franchise shall not be sold, transferred, assigned or otherwise encumbered, without the prior written consent of the City, with such consent not being unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by other hypothecation, or by assignment or any rights, title or interest in VERIZON's telecommunications system in order to secure indebtedness. Approval shall not be required for mortgaging purposes provided that the collateral pledged for any mortgage shall not include the assets of this franchise. Approval shall not be required for any transfer from VERIZON to another person or entity controlling, controlled by, or under common control with VERIZON. VERIZON may license Facilities to other users without the consent of the City provided that VERIZON remains solely responsible for the terms and conditions outlined in this Franchise Agreement.

B. In any transfer of this Franchise which requires the approval of the City, VERIZON shall show that the recipient of such transfer has the technical ability, financial capability, and any other legal or general qualifications as reasonably determined by the City to be necessary to ensure that the obligations and terms required under this Franchise Agreement can be met to the full satisfaction of the City. This Franchise may not be transferred without filing or establishing with the City the

insurance certificates, security fund, and performance bond as required pursuant to this Franchise. The qualifications of any transferee shall be determined by a hearing before the City Council and the approval to such transfer shall be granted by resolution of the City Council. Any reasonable administrative costs associated with a transfer of this Franchise that requires the approval of the City shall be reimbursed to the City within 30 days of such transfer. The transferee(s) shall thereafter be responsible for all obligations of VERIZON with respect to the Franchise; provided, that the transfer shall not in any respect relieve VERIZON, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, if the acts or omissions occur before the time of the transfer.

Section 11. Administrative Fees.

A. Pursuant to the Revised Code of Washington (RCW), the City is precluded from imposing franchise fees for "telephone businesses" as defined in RCW 82.16.010, or "service provider" as defined in RCW 35.99.010, except that fees may be collected for administrative expenses related to such franchise. VERIZON does hereby warrant that its operations, as authorized under this Franchise Agreement, are those of a telephone business as defined in RCW 82.16.010 or a service provider as defined in 35.99.010.

B. VERIZON shall be subject to a one-time \$5,000 administrative fee for reimbursement of costs associated with the preparation, processing and approval of this Franchise Agreement. These costs shall include, but not be limited to, wages, benefits, overhead expenses, equipment and supplies associated with such tasks as plan review, site visits, meetings, negotiations and other functions critical to proper management and oversight of the City's right-of-way. Administrative fees exclude normal permit fees as stipulated in Title 11 of the Tukwila Municipal Code. Payment of the one-time administrative fee is due 30 days after notice of franchise approval.

C. The City reserves the right to exercise authority it has or may acquire in the future to charge a franchise fee as authorized by law and VERIZON shall in good faith endeavor to negotiate a reasonable Franchise fee or other fee if future law permits the City to charge a Franchise fee. However, the parties shall negotiate a site-specific charge acceptable to the parties for facilities for personal wireless services that meet one of the criteria in RCW 35.21.860(1)(e)(i)-(iii). Pursuant to RCW 35.21.860(1)(e), the City is not required to approve a use permit for the placement of a facility for personal wireless services that meets one of the criteria set forth in RCW 35.21.860(1)(e)(i)-(iii) absent such an agreement.

D. In the event VERIZON submits a request for work beyond the scope of this Franchise Agreement, or submits a complex project that requires significant comprehensive plan review or inspection, VERIZON shall reimburse the City for franchise amendments and reasonable expenses associated with the project. VERIZON shall pay such costs within 60 days of receipt of a bill from the City.

E. Failure by VERIZON to make full payment of bills within the time specified shall be considered sufficient grounds for the termination of all rights and privileges existing under this ordinance, utilizing the procedures specified in Section 7 of this ordinance.

Section 12. Notices. Any notice to be served upon the City or VERIZON shall be delivered to the following addresses respectively:

City of Tukwila

Office of the City Clerk
6200 Southcenter Boulevard
Tukwila, WA 98188

Email: TukwilaCityClerk@tukwilawa.gov
Phone: 206-433-1855

With a copy to:

Public Works Director
City of Tukwila
6300 Southcenter Boulevard Ste. 100
Tukwila, WA 98188

Seattle SMSA Limited Partnership

d/b/a Verizon Wireless
Attn: Network Real Estate
180 Washington Valley Road
Bedminster, NJ 07921

With a copy to:

Seattle SMSA Limited Partnership
d/b/a Verizon Wireless
Attn: Pacific Market General Counsel
15505 Sand Canyon Ave.
Irvine, CA 92618

Section 13. Indemnification.

A. VERIZON shall use reasonable and appropriate precautions to avoid damage to persons or property in the construction, installation, repair, operation, and maintenance of its structures and Facilities within the Franchise Area. VERIZON shall release, indemnify, defend, and hold the City harmless from all claims, actions or damages, including reasonable attorney's and expert witness fees, which may accrue to or be suffered by any person or persons, corporation or property to the extent caused in part or in whole by any act or omission of VERIZON, its officers, agents, servants or employees, carried on in the furtherance of the rights, benefits, and privileges granted to VERIZON by this Franchise. In the event any claim or demand is presented to or filed with the City that gives rise to VERIZON's obligation pursuant to this section, the City shall within a reasonable time notify VERIZON thereof and VERIZON shall have a right, at its election, to settle or compromise such claim or demand. In the event any claim or action is commenced in which the City is named a party, and which suit or action is based on a claim or demand which gives rise to VERIZON's obligation pursuant to this section, the City shall promptly notify VERIZON thereof, and VERIZON shall, at its sole

cost and expense, defend such suit or action by attorneys of its own election. In defense of such suit or action, VERIZON may, at its election and at its sole cost and expense, settle or compromise such suit or action. This section shall not be construed to require VERIZON to:

1. protect and save the City harmless from any claims, actions or damages;
2. settle or compromise any claim, demand, suit or action;
3. appear in or defend any suit or action; or,
4. pay any judgment or reimburse the City's costs and expenses (including reasonable attorney's fees), to the extent such claim arises out of the negligence or intentional acts of the City, its employees, agents or independent contractors.

B. To the extent of any concurrent negligence between VERIZON and the City, VERIZON's obligations under this paragraph shall only extend to its share of negligence or fault. The City shall have the right at all times to participate through its own attorney in any suit or action that arises out of any right, privilege, and authority granted by or exercised pursuant to this Franchise Agreement when the City determines that such participation is required to protect the interests of the City or the public. Such participation by the City shall be at the City's sole cost and expense.

C. With respect to the performance of this Franchise and as to claims made by VERIZON's employees against the City, its officers, agents and employees, VERIZON expressly waives its immunity under Title 51 of the Revised Code Washington, the Industrial Insurance Act for injuries to its officers, agents and employees and agrees that the obligation to indemnify, defend and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of VERIZON's officers, agents or employees against the City. This waiver is mutually negotiated by the parties.

Section 14. Severability. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the City may elect to treat the portion declared invalid or unconstitutional as severable and enforce the remaining provisions of this ordinance; provided that, if the City elects to enforce the remaining provisions of the ordinance, Verizon shall have the option to terminate the Franchise Agreement.

Section 15. Reservation of Rights.

A. The parties agree that this Franchise Agreement is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders and ordinances in effect on the date the permits and authorizations are issued for the affected Facilities. Accordingly, any provision of this Franchise Agreement or any local ordinance that may conflict with or violate the law shall be invalid and unenforceable, whether occurring before or after the execution of this agreement, it being the intention of the parties to preserve their respective rights and remedies under the law, and that the execution of this Franchise Agreement does not constitute a waiver of any rights or obligations by either party under the law.

B. Nothing in this Franchise Agreement shall prevent the City from constructing sanitary or storm sewers; grading, changing grade, paving, repairing, widening or otherwise altering any Public Rights-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable.

Section 16. Police Powers.

A. Nothing contained herein shall be deemed to affect the City's authority to exercise its police powers. VERIZON shall not by this Franchise Agreement obtain any vested rights to use any portion of the City right-of-way except for the locations approved by the City and then only subject to the terms and conditions of this Franchise Agreement. This Franchise Agreement and the permits issued thereunder shall be governed by applicable City ordinances in effect at the time of application for such permits.

B. Nothing in this Franchise Agreement shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of VERIZON's Facilities. City's approvals and inspections as provided herein are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or Construction of the Facilities or Telecommunications System, suitability of the Franchise area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a governmental entity. The City is under no obligation or duty to supervise the design, Construction, or operation of the Telecommunications System.

Section 17. Future Rules, Regulations and Specifications. VERIZON acknowledges that the City may develop rules, regulations and specifications, including a general ordinance or other regulations governing telecommunications operations in the City. Such regulations, upon written notice to VERIZON, shall thereafter govern VERIZON's activities hereunder; provided, however, that in no event shall regulations:

1. materially interfere with or adversely affect VERIZON's rights pursuant to and in accordance with this Franchise Agreement; or
2. be applied in a discriminatory manner as it pertains to VERIZON and other similar user of such facilities.

Section 18. Entire Agreement. This Franchise Agreement contains all covenants and agreements between the City and VERIZON relating in any manner to the Franchise, use, and occupancy of the Public Rights-of-Way and other matters set forth in this Franchise Agreement. No prior agreements or understanding pertaining to the same, written or oral, shall be valid or of any force or effect and the covenants and agreement of VERIZON shall not be altered, modified, or added to except in writing signed by the City and VERIZON and approved by the City in the same manner as the original Franchise was approved.

Section 19. Calculation of Time. Except where a period of time refers to “business days,” all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington; provided that, the effective date shall be determined as provided in this Franchise Agreement.

Section 20. Time Limits Strictly Construed. Whenever this Franchise Agreement sets forth a time for any act to be performed by VERIZON, such time shall be deemed to be of the essence, and any failure of VERIZON to perform within the allotted time may be considered a Default of this Franchise Agreement.

Section 21. Joint Venture. It is not intended by this Franchise Agreement to, and nothing contained in this Franchise Agreement shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between VERIZON and City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner that would indicate any such relationship. The Parties intend that the rights, obligations, and covenants in this Franchise Agreement and any collateral instruments shall be exclusively enforceable by the City and VERIZON, their successors, and assigns. No Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, VERIZON is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. However, nothing in this section prevents an assignment as provided for in this Franchise Agreement.

Section 22. Binding Effect Upon Successors and Assigns. All of the provisions contained in this Franchise Agreement shall be binding upon the heirs, successors, executors, administrators, receivers, trustees, legal representatives, transferees and assigns of VERIZON; and all privileges as well as any obligations and liabilities of VERIZON shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever VERIZON is named herein.

Section 23. Waiver. No failure by either Party to insist upon the performance of any of the terms of this Franchise Agreement or to exercise any right or remedy consequent upon a Default thereof, shall constitute a waiver of any such Default or of any of the terms of this Franchise Agreement. None of the terms of this Franchise Agreement to be kept, observed, or performed by either Party, and no Default thereof, shall be waived, altered, or modified except by a written instrument executed by the injured Party. No waiver of any Default shall affect or alter this Franchise Agreement, but each of the terms of this Franchise Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default thereof. No waiver of any Default of the defaulting Party shall be implied from any omission by the injured Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers

by the injured Party shall not be construed as a waiver of the subsequent Default of the same covenant, term, or conditions.

Section 24. Survival of Terms. Upon the expiration, termination, revocation, or forfeiture of the Franchise Agreement, VERIZON shall no longer have the right to occupy the Franchise area for the purpose of providing services authorized herein. However, VERIZON's obligations under this Franchise Agreement to the City shall survive the expiration, termination, revocation, or forfeiture of these rights according to its terms for so long as VERIZON's Telecommunications System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, or until such time as VERIZON transfers ownership in all Facilities in the Franchise Area to the City or a third-Party, or until such time as VERIZON abandons said Facilities in place, all as provided herein. Said obligations include, but are not limited to: VERIZON's obligations to indemnify, defend, and protect the City, to provide insurance, to relocate its Facilities, and to reimburse the City for its costs to perform VERIZON's work.

Section 25. Force Majeure.

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

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

Section 26. Attorneys' Fees. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, whether in contract or in tort or both, is instituted to enforce any word, article, section, subsection, paragraph, provision, condition, clause or sentence of this Franchise Agreement or its application to any person or circumstance, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys, paralegals, accountants, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as allowed by Washington law and as determined by the judge or arbitrator at

trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by Law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law. This provision shall not apply to the extent that the suit, action, arbitration, or other proceeding is brought to interpret any term, condition, provision, section, article, or clause of this Franchise Agreement.

Section 27. Venue. This Franchise Agreement shall be governed by, and construed in accordance with the laws of the State of Washington. Any action brought relative to enforcement of this Franchise Agreement, or seeking a declaration of rights, duties, or obligations herein shall be initiated in the Superior Court of King County, and shall not be removed to a federal court, except as to claims over which such Superior Court has no jurisdiction. Removal to federal court shall be to the Federal Court of the Western District of Washington.

Section 28. 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; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 29. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this 19TH day of March, 2018.

ATTEST/AUTHENTICATED:

Christy O'Flaherty
Christy O'Flaherty, MMC, City Clerk

Verna Seal
Verna Seal, Mayor Pro Tempore

APPROVED AS TO FORM BY:

Rachel B Turpin
Rachel B. Turpin, City Attorney

Filed with the City Clerk: 3-14-18
Passed by the City Council: 3-19-18
Published: 3-22-18
Effective Date: 3-27-18
Ordinance Number: 2568

Attachment: Exhibit A – Franchise Agreement Acceptance Form

EXHIBIT A

**Seattle SMSA Limited Partnership, d/b/a Verizon Wireless
Franchise Agreement Acceptance Form**

Date: _____

City of Tukwila
City Clerk's Office
6200 Southcenter Boulevard
Tukwila, WA 98188

Dear City Clerk:

Re: Ordinance No. _____, adopted on _____

In accordance with and as required by Section 5 of City of Tukwila Ordinance No. _____, passed by the City Council and approved by the Mayor on _____ (the "Ordinance"), Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless, hereby accepts the terms, conditions and obligations to be complied with or performed by it under the Ordinance.

Sincerely,

Jim R. Creel, Jr.,
Director – Network Field Engineering

cc: Public Works Director, City of Tukwila

City of Tukwila Public Notice of Ordinance Adoption for Ordinance 2568.

On March 19, 2018 the City Council of the City of Tukwila, Washington, adopted the following ordinance, the main points of which are summarized by title as follows:

Ordinance 2568: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO SEATTLE SMSA LIMITED PARTNERSHIP, A DELAWARE LIMITED PARTNERSHIP, D/B/A VERIZON WIRELESS, LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A TELECOMMUNICATIONS SYSTEM IN THE PUBLIC RIGHTS-OF-WAY IN THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this ordinance will be provided upon request.

Christy O'Flaherty, MMC, City Clerk

Published Seattle Times: March 22, 2018

COUNCIL AGENDA SYNOPSIS

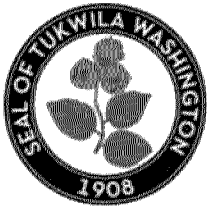


-----Initials-----			
Meeting Date	Prepared by	Mayor's review	Council review
02/26/18	RT <i>RT</i>	<i>OK</i>	<i>CH</i>
03/05/18	RT <i>RT</i>		

<p>ITEM No.</p> <p style="font-size: 2em;">4.A.</p>

ITEM INFORMATION

		STAFF SPONSOR: ROBIN TISCHMAK			ORIGINAL AGENDA DATE: 02/26/18					
AGENDA ITEM TITLE Ordinance Granting a Non-Exclusive Franchise Agreement with Verizon Wireless for Small Cell Technology										
CATEGORY	<input checked="" type="checkbox"/> Discussion <i>Mtg Date 02/26/18</i>	<input type="checkbox"/> Motion <i>Mtg Date</i>	<input type="checkbox"/> Resolution <i>Mtg Date</i>	<input checked="" type="checkbox"/> Ordinance <i>Mtg Date 03/05/18</i>	<input type="checkbox"/> Bid Award <i>Mtg Date</i>	<input type="checkbox"/> Public Hearing <i>Mtg Date</i>	<input type="checkbox"/> Other <i>Mtg Date</i>			
SPONSOR	<input type="checkbox"/> Council	<input type="checkbox"/> Mayor	<input type="checkbox"/> HR	<input type="checkbox"/> DCD	<input type="checkbox"/> Finance	<input type="checkbox"/> Fire	<input type="checkbox"/> IT	<input type="checkbox"/> P&R	<input type="checkbox"/> Police	<input checked="" type="checkbox"/> PW
SPONSOR'S SUMMARY	<p>Verizon Wireless provides a full-service communication system in the US and Europe. Council is being asked to approve the new ordinance for the franchise agreement that will allow Verizon Wireless to deploy small cell technology to expand the capacity of its wireless network. Additional language has been added to insure safety and protect property, insurance requirements, and restoration to any property damaged, disturbed, or altered by Verizon.</p>									
REVIEWED BY	<input type="checkbox"/> COW Mtg.	<input type="checkbox"/> CA&P Cmte	<input type="checkbox"/> F&S Cmte	<input checked="" type="checkbox"/> Transportation Cmte						
	<input type="checkbox"/> Utilities Cmte	<input type="checkbox"/> Arts Comm.	<input type="checkbox"/> Parks Comm.	<input type="checkbox"/> Planning Comm.						
DATE:	11/28/17			COMMITTEE CHAIR: KATE KRULLER						
RECOMMENDATIONS:										
SPONSOR/ADMIN. Public Works Department										
COMMITTEE Discussion only										
COST IMPACT / FUND SOURCE										
EXPENDITURE REQUIRED		AMOUNT BUDGETED			APPROPRIATION REQUIRED					
\$0.00		\$0.00			\$0.00					
Fund Source:										
Comments:										
MTG. DATE	RECORD OF COUNCIL ACTION									
02/26/18										
03/05/18										
MTG. DATE	ATTACHMENTS									
02/26/18	Informational Memorandum dated 11/22/17									
	Ordinance									
	Minutes from the Transportation & Infrastructure Committee meeting of 11/28/17									
03/05/18										



INFORMATIONAL MEMORANDUM

TO: Transportation and Infrastructure Committee
FROM: Robin Tischmak, City Engineer
BY: Gail Labanara, Public Works Analyst
CC: Mayor Ekberg
DATE: February 9, 2018
SUBJECT: Ordinance – Verizon Wireless Small Cell Technology Franchise Agreement

ISSUE

Approval of Verizon Wireless Franchise Ordinance.

BACKGROUND

Seattle SMSA Limited Partnership, headquartered in Delaware, is doing business as Verizon Wireless. Verizon is the second largest U.S. telecommunications service provider and has its roots in the breakup of the Bell System. Verizon was formed in 2000 from a merger between Bell Atlantic and GTE. Verizon Wireless provides a full-service communications systems industry in the US and Europe. Verizon Wireless is currently in the stages of deploying small cell technology to expand the capacity of its wireless network.

ANALYSIS

The attached Franchise Ordinance establishes permission for Verizon's deployment of small cellular technology in the City's right-of-way. Some of the features of the Verizon Franchise include:

- Definitions for clarity of references
- Provisions that the City provides no warranty in the right-of-way and will not defend Verizon for peaceable possession or use of the franchise area
- Provided provisions allowing the City to require notice to the public for work that will disturb or disrupt public property. Clarifies that the City can protect the public health, safety, and welfare by requiring facilities to be installed at a particular time, place, or manner
- Establishes a duty to restore the right-of-way to a condition as good or better than before the construction and provides a warranty of same. Protects private property by requiring Verizon to restore any private property damaged, disturbed, or altered by Verizon
- Provides that any contractors or subcontractors of Verizon that perform work in the right-of-way must comply with the City's indemnity and insurance requirements and mandates that Verizon take responsibility for all work performed by Verizon's contractors and subcontractors
- Specifies the City's stop work authority should work be performed in an unsafe manner
- Provides for revocation of the franchise should Verizon's business end up in receivership
- Clarifies that the franchise does not preclude the City from constructing its own utility facilities, repairing, maintaining, or widening the right-of-way.

FINANCIAL IMPACT

Under the terms of the Franchise, Verizon Wireless will pay a \$5,000 administrative fee within 30 days of franchise approval.

Per RCW 35.21.860, cities may charge site-specific charges to providers of personal wireless services under certain circumstances before the City issues a use permit. This Franchise tracks that statutory language and provides that Verizon and the City will determine applicable site-specific charges at the use permit stage for eligible facilities.

RECOMMENDATION

Council is being asked to approve the Ordinance that will grant a Franchise Agreement to Verizon Wireless for Small Cell Technology and consider this item at the February 26, 2018 Committee of the Whole and subsequent March 5, 2018 Regular Meeting.

Attachment: Draft Franchise Ordinance