







CITY COUNCIL WORKSHOP MEETING AGENDA
Monday, September 16, 2019, 4:30 PM
City Hall, 616 NE 4th Ave

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC COMMENTS

IV. WORKSHOP TOPICS

- A. Recognition of 30-Year Anniversary for Greg Payne, Battalion Chief
Presenter: Nick Swinhart, Fire Chief
- B. Employee Recognition
- C. Camas Transportation System Plan Update
Presenter: James Carothers, Engineering Manager and Steve Wall, Public Works Director
 [Transportation Plan Presentation](#)
- D. New Cingular Wireless PCS, LLC (dba AT&T) Franchise Agreement and License Agreement
Presenter: Steve Wall, Public Works Director
 [Staff Report New Cingular Franchise 9-16-2019](#)
[ATT Franchise - Draft for Workshop 9-16-2019](#)
[ATT Small Cells License Agreement - Workshop Draft 9-16-2019](#)
- E. Water Quality Standards Review
Presenter: Steve Wall, Public Works Director
 [Staff Report Water Quality Standards Review 9-16-2019](#)
[Fish Consumption Rule Comment DRAFT](#)
- F. Public Works Miscellaneous and Updates
Details: This is a placeholder for miscellaneous or emergent items.
Presenter: Steve Wall, Public Works Director
- G. North Shore Subarea Plan Update
Presenter: Sarah Fox, Senior Planner
 [North Shore Subarea Plan - update](#)
- H. Shoreline Master Program Update
Presenter: Sarah Fox, Senior Planner

- I. Community Development Miscellaneous and Updates
Details: This is a placeholder for miscellaneous or emergent items.
Presenter: Phil Bourquin, Community Development Director
- J. 2019-2020 City of Camas Capital Budget Presentation
Presenter: Cathy Huber Nickerson, Finance Director
- K. 2020-2025 City of Camas Budget Forecast
Presenter: Cathy Huber Nickerson, Finance Director
- L. City Administrator Miscellaneous Updates and Scheduling
Details: This is a placeholder for miscellaneous or scheduling items.
Presenter: Pete Capell, City Administrator

V. COUNCIL COMMENTS AND REPORTS

VI. PUBLIC COMMENTS

VII. ADJOURNMENT

NOTE: The City welcomes public meeting citizen participation. For accommodations; call 360.834.6864.

Camas Transportation System Plan (TSP) Update



TSP Objectives

- Identify transportation wants and needs (20 year window)
- Involve stakeholders / collect input
- Combine current studies with additional comprehensive perspectives



TSP – Value Added Features

- Transportation Impact Fee (TIF) projects are tied to growth
- TSP projects are tied to a larger vision
 - What do we want Camas to look like in 20 years?
 - How do we want our transportation system to operate?
 - How do we want to implement multiple modes of transportation?
 - How will multi-modal considerations refine our streetscape standards?
 - How does our system integrate with our neighbors' systems?



TSP Elements

- Review concurrency standards for roads
- Update TIF
- Integrate consideration of multi-modal transportation needs
- Provide overview of Citywide comprehensive projects
- Evaluate potential adoption of Complete Streets ordinance



TSP Progress

- TSP Committee has been formed and has met
- Includes stakeholders inside and outside the City
- Evaluation of existing data underway
- Committee meets again this fall



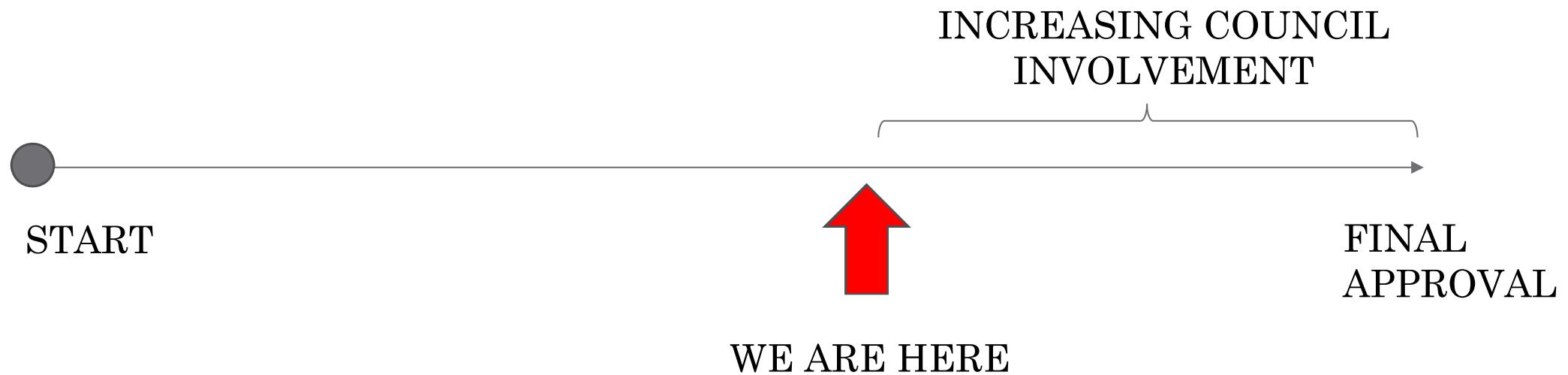
Council Involvement

- Approve recommended concurrency standards for roads
- TIF decisions
- Multi-modal transportation / streetscape considerations
- Approve updated Citywide transportation projects
- Consider Complete Streets ordinance

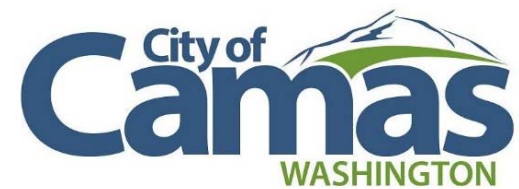


Timeline

- Expect updated TIF draft by end of this year
- Other elements to follow



Questions?





Staff Report

September 16, 2019 Council Workshop Meeting

New Cingular Wireless PCS, LLC (AT&T) Franchise Agreement and License Agreement

Staff Contact	Phone	Email
Steve Wall, Public Works Director	360.817.7899	swall@cityofcamas.us

SUMMARY: New Cingular Wireless PCS, LLC, doing business as AT&T and through its local representatives and their attorney requests a Franchise Agreement with the City for installation of telecommunication facilities within the City right-of-way. The franchise agreement and facilities installed in association with the agreement will be used in part to serve future small cell wireless sites that AT&T representatives have recently discussed and presented on at Council Workshops in coordination with City staff. The draft ordinance has been reviewed by staff and the City Attorney, as well as AT&T and their attorney.

In addition to the Franchise Agreement, City and AT&T representatives have developed a License Agreement for Wireless Installations on Public Structures. This License Agreement works with the Franchise Agreement and will be used for specific Small Cell Wireless antenna locations proposed by AT&T. AT&T will fill out the Site License Application and Site License Agreement and City Staff will review for consistency with City codes and standards and approve once all conditions are met. The Site License will then be used as the tracking mechanism for each site. The conditions of the License Agreement and associated Site License Applications will be in addition to any Encroachment Permits and other potential land use permits that are required for AT&T to do the requested work.

The approval process for the Franchise Agreement includes the need to hold a public hearing to receive public testimony. Following the hearing, an Ordinance would be presented to City Council for consideration for adoption. The License Agreement would be approved separately from the Franchise Agreement; however, staff is recommending that it follow a similar review and adoption process.

BUDGET: In accordance with the License Agreement, AT&T will pay to the City \$270 per year for each wireless installation located within the City's right-of-way. This annual fee is in addition to any other permit fees collected by the City to process the permit and approve the installation.

RECOMMENDATION: Staff recommends Council set a date for a public hearing to be held on October 7, 2019 to review the Franchise Ordinance and License Agreement.

ORDINANCE NO. 19-[xxx]

AN ORDINANCE OF THE CITY OF CAMAS, WASHINGTON, GRANTING NEW CINGULAR WIRELESS PCS, LLC, A NON-EXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR WIRELESS COMMUNICATIONS FACILITIES IN, ALONG, UNDER, THROUGH AND BELOW PUBLIC RIGHTS-OF-WAY OF THE CITY OF CAMAS, WASHINGTON

WHEREAS, New Cingular Wireless PCS, LLC (“New Cingular”) has requested a non-exclusive franchise with the City of Camas (“City”) for a period of ten years for the operation of wireless communications facilities within the City Right-of-Way; and

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public Right-of-Way; and

WHEREAS, RCW 35A.47.040 grants the City broad authority to grant non-exclusive franchises; and

WHEREAS, New Cingular wishes to construct, operate and maintain wireless communications facilities within the City Right-of-Way; and

WHEREAS, the City Council finds that it is in the best interests of the health, safety and welfare of residents of the Camas community to enter into a non-exclusive franchise to New Cingular for the operation of wireless communications facilities within the City Right-of-Way.

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

Section I

Grant of Franchise

The Franchise as set forth in the Franchise Agreement attached hereto as Exhibit “A” is hereby granted according to its terms.

Section II

This ordinance shall take effect five (5) days after its publication according to law.

PASSED by the Council and APPROVED by the Mayor this ____ day of _____, 2019.

SIGNED: _____
Mayor

ATTEST: _____
Clerk

APPROVED as to form:

City Attorney

EXHIBIT “A”

FRANCHISE AGREEMENT FOR THE INSTALLATION AND MAINTENANCE OF WIRELESS COMMUNICATIONS FACILITIES IN THE CITY OF CAMAS, WASHINGTON

Parties:

City of Camas, a Washington Municipal Corporation (“City”) And

New Cingular Wireless PCS, LLC, a Delaware limited liability company (“New Cingular”).

In consideration of the mutual promises set forth herein, the parties agree as follows:

Section 1. Definitions

The following terms contained herein, unless otherwise indicated, shall be defined as follows:

- 1.1 New Cingular: New Cingular Wireless PCS, LLC, and its respective successors and assigns.
- 1.2 City: The City of Camas, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.
- 1.3 Days: Calendar days.
- 1.4 Facilities: All of the plant, equipment, fixtures, appurtenances, and other facilities necessary to furnish and deliver wireless services, including but not limited to optical converters, remote radios, multiplexers, antennas, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, cut-off switches, electric meters, wires, lines, conduits, cables, communication and signal lines and equipment, fiber optic cable, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to distribution and use of wireless services and all other facilities associated with the wireless communications facilities located in the Right-of-Way, utilized by New Cingular in the operation of activities authorized by this Ordinance. The abandonment by New Cingular of any Facilities as defined herein shall not act to remove the same from this definition.
- 1.5 Franchise: This document and any amendments or modifications hereto.
- 1.6 Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's Right-of-Way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.
- 1.7 Person: An entity or natural person.
- 1.8 Public Works Director or Director: The head of the Public Works department of the City, or in the absence thereof, the acting director, or the designee of either of these individuals.

1.9 Right-of-Way: As used herein shall refer to the surface of and the space along and below any street, road, highway, freeway, bridge, lane, sidewalk, alley, court, boulevard, sidewalk, parkway, drive, utility easement, and/or road Right-of-Way now or hereafter held or administered by the City of Camas.

1.10 Wireless Services: Wireless communications services that New Cingular may lawfully provide in the City.

Section 2. Franchise Granted.

2.1 Pursuant to RCW 35A.47.040, the City hereby grants to New Cingular, its heirs, successors, and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of ten (10) years (the "Initial Term"), beginning on the effective date of this Ordinance. Following the Initial Term, this Franchise shall automatically be renewed for three (3) additional periods of five (5) years (each a "Renewal Term"), unless New Cingular provides the City notice of its intent not to renew at least ninety (90) days before the expiration of the Initial Term or then current Renewal Term, as applicable.

2.2 This Franchise shall grant New Cingular the right, privilege and authority to locate, construct, operate, maintain, replace, acquire, sell, lease, and use its Facilities in the Right-of-Way as approved under City permits issued by the Permitting Authority pursuant to this Franchise and City ordinances.

Section 3. Nonexclusive Franchise Grant.

This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in any Right-of-Way. This Franchise shall in no way prevent or prohibit the City from using any Right-of-Way or other public property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement or dedication of the same as the City may deem appropriate.

Section 4. Franchise Subject to Federal, State and Local Law.

Notwithstanding any provision contrary herein, this Franchise is subject to and shall be governed by all applicable provisions now existing or hereafter amended of federal, State and local laws and regulations.

Section 5. No Rights by Implication.

5.1 No rights shall pass to New Cingular by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

5.1.1 Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

5.1.2 Any permit, agreement or authorization required by the City for Rights-of-Way users in connection with operations on or in Rights-of-Way or public property; or

5.1.3 Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise.

Section 6. Conveyance of Rights.

This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Rights-of-Way; it does not provide New Cingular with any interest in any particular location within the Rights-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

Section 7. No Waiver.

The failure of City on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any other applicable State or federal law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City nor to excuse New Cingular from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

Section 8. Other Ordinances.

New Cingular agrees to comply with the terms of any lawful, generally applicable local ordinance, in effect upon adoption of this Franchise or as enacted or modified thereafter. In the event of a conflict between any ordinance and a specific provision of this Franchise, the Franchise shall control, provided however that New Cingular agrees that it is subject to the lawful exercise of the police power of the City.

Section 9. Right-of-Way Vacation.

If any Right-of-Way or portion thereof used by New Cingular is vacated by the City during the term of this Franchise, the City shall endeavor to specifically reserve the continued use of the Right-of-Way by New Cingular. Unless the City specifically reserves to New Cingular the right to continue the use of vacated Rights-of-Way, New Cingular shall, without delay or expense to the City but upon as much advance notice as feasible under the circumstances (and in no event less than sixty (60) days), remove its facilities from such Right-of-Way and restore, repair or reconstruct the Right-of-Way where such removal has occurred. In the event of failure, neglect or refusal of New Cingular to restore, repair or reconstruct such Right-of-Way after thirty (30) days written notice from the City, the City may do such work or cause it to be done, and the reasonable cost thereof shall be paid by New Cingular within thirty (30) days of receipt of an invoice and documentation.

Section 10. Relocation of Facilities.

10.1 New Cingular agrees and covenants at no cost to the City, to relocate its Facilities when requested to do so by the City for a public project, provided that, New Cingular shall in all such cases have the privilege, upon approval by the City, to temporarily bypass, in the authorized portion of the same Right-of-Way any Facilities required to be relocated.

10.2 If the City determines that a public project necessitates the relocation of New Cingular's existing Facilities, the City shall:

10.2.1 At least seventy-five (75) days prior to the commencement of such project, provide New Cingular with written notice of known Facilities requiring such relocation; and

10.2.2 Provide New Cingular with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for New Cingular's Facilities.

10.2.3 Meet with New Cingular, if requested, within five (5) business days to discuss the scope, requirements and challenges of the relocation work.

10.3 After receipt of such notice and such plans and specifications and meeting, New Cingular shall complete relocation of its Facilities at no charge or expense to the City at least ten (10) days prior to commencement of the project.

10.4 New Cingular may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise New Cingular in writing as soon as practicable if any of the alternatives is suitable to accommodate the work that otherwise necessitates the relocation of the Facilities. If so requested by the City, New Cingular shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by New Cingular as full and fair a consideration as the project schedule will allow. In the event the City ultimately determines that there is no other reasonable alternative, New Cingular shall relocate its Facilities as directed by the City and in accordance with this Section 10.

10.5 The City will notify New Cingular as soon as practical of any facilities that are not identified during the design of the public project, but are discovered during the course of construction and need to be relocated. New Cingular will work with the City to design and complete a relocation to facilitate the completion of the public project with minimum delay.

10.6 Failure to complete a relocation requested by the City in accordance with this Section 10 by the date included in the notice provided for thereby may subject New Cingular to liquidated damages as provided in Section 29 of this Franchise, except in the event New Cingular suffers a force majeure or other event beyond its reasonable control. Alternatively, should the City's Project be delayed as a result of New Cingular's failure to complete a relocation requested in accordance with this Section 10 and provided New Cingular has not suffered a force majeure or other event beyond its reasonable control, then City may, at New Cingular's sole expense, have the Facilities relocated by City's contractor. In such event, New Cingular shall pay the cost of relocation within 30 days of submission of an invoice by City. This Section shall only apply if applied in a non-discriminatory manner and it is necessary for all Facilities and appurtenances to be moved in the same location.

10.7 The provisions of this Section of this Franchise shall in no manner preclude or restrict New Cingular from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person other than the City, where the improvements to be constructed by said person are not or will not become City-owned, operated or maintained, provided that such arrangements do not unduly delay a City construction project. The provisions of this Franchise are subject to RCW 35.99.060. In the event of a conflict between the provisions of this Franchise and the RCW, the RCW shall control.

10.8 New Cingular recognizes the need for the City to maintain adequate width for installation and maintenance of sanitary sewer, water and storm drainage utilities owned by the City and

other public utility providers. Thus, the City reserves the right to maintain clear zones within the public right-of-way for installation and maintenance of said utilities. The clear zones for each Right-of-Way segment shall be noted and conditioned with the issuance of each Right-of-Way permit. If adequate clear zones are unable to be achieved on a particular Right-of-Way, New Cingular shall locate in an alternate Right-of-Way, obtain easements from private property owners, or propose alternate construction methods which maintain and/or enhance the existing clear zones.

Section 11. New Cingular's Maps and Records.

As a condition of this Franchise, and at its sole expense, New Cingular shall provide the City with typicals and as-built plans, maps, and records that show the vertical and horizontal location of its Facilities within the Right-of-Way using a minimum scale of one inch equals one hundred feet (1"=100'), measured from the center line of the Right-of-Way, which maps shall be in hard copy format acceptable to the City and in Geographical Information System (GIS) or other digital electronic format acceptable to the City.

Section 12. Undergrounding.

12.1 This Franchise is subject to the undergrounding requirements as may be required or later adopted by the Camas Municipal Code and consistent with applicable federal and Washington State law. New Cingular shall install all of its Facilities (excluding antennas, equipment cabinets, cabling and other equipment that must be above-ground in order to be functional) underground where all adjacent existing telecommunications and cable facilities are located underground. Any new Facilities to be located above-ground shall be placed on existing utility support structures; provided, however, that upon demonstrating that the installation of New Cingular's Facilities on a proposed New Cingular-owned pole is in compliance with the City's Public Works Small Wireless Facility ("SWF") Design Standards, New Cingular may construct such pole in the Right-of-Way; and further provided, however, New Cingular acknowledges and agrees that no New Cingular-owned pole may be placed in the Right-of-Way without the City's prior approval of its location and design.

12.2 New Cingular will also share information necessary to facilitate joint-trenching and other undergrounding projects, and will otherwise cooperate with the City and other utility providers to serve the objective to maximize utility undergrounding where possible or as required.

Section 13. Service to Public Buildings (intentionally blank)

Section 14. Excavation and Notice of Entry.

14.1 During any period of relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the Right-of-Way so as to minimize interference with the passage of traffic and the use of adjoining property. New Cingular shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or State law, including RCW 39.04.180, for the construction of trench safety systems.

14.2 Whenever New Cingular excavates in any Right-of-Way for the purpose of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for a

permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in the Right-of-Way. In no case shall any work commence within any Right-of-Way without a permit. During the progress of the work, New Cingular shall not unnecessarily obstruct the passage or use of the Right-of-Way, and shall provide the City with plans, maps, and information showing the proposed and final location of any Facilities in accordance with Section 11 of this Franchise.

14.3 At least five (5) days prior to construction of Facilities consisting of digging, trenching, cutting, or other activities that may impact the utilization of the Right-of-Way for more than a four (4) hour period, New Cingular shall take reasonable steps to inform all apparent owners or occupiers of property within fifty (50) feet of said activities that a construction project will commence. The notice shall include, at a minimum, the dates and nature of the project and a toll-free or local telephone number that the resident may call for further information. A pre-printed door hanger may be used to satisfy New Cingular's obligations under this Section of this Franchise.

14.4 At least twenty-four (24) hours prior to entering Right-of-Way within ten (10) feet of private property to construct Facilities consisting of digging, trenching, cutting, or other activities that may impact the utilization of the Right-of-Way, New Cingular shall post a written notice describing the nature and location of the work to be performed adjacent to the affected private property. New Cingular shall make a good faith effort to comply with the property owner/resident's preferences, if any, regarding the location or placement of Facilities that protrude above the prior ground surface level, if any, consistent with sound engineering practices.

Section 15. Stop Work.

On notice from the City that any work is being conducted contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, consistent with applicable law, 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:

15.1 Be in writing;

15.2 Be given to the Person doing the work and be posted on the work site;

15.3 Be sent to New Cingular by email at the address given herein, provided the recipient of such email confirms receipt by reply email, which confirmation shall not include an automatic delivery or read receipt;

15.4 Indicate the nature of the alleged violation or unsafe condition; and

15.5 Establish conditions under which work may be resumed.

Section 16. Emergency Work, Permit Waiver.

In the event of any emergency where any Facilities located in the Right-of-Way are broken or damaged, or if New Cingular's construction area for their Facilities is in such a condition as to place the health or safety of any person or property in imminent danger, New Cingular shall immediately take any necessary emergency measures to repair or remove its Facilities without first applying for and obtaining a permit as required by this Franchise. However, this emergency

provision shall not relieve New Cingular from later obtaining any necessary permits for the emergency work. New Cingular shall apply for the required permits not later than the next business day following the emergency work.

Section 17. Recovery of Costs.

New Cingular shall be subject to all permit fees associated with activities undertaken pursuant to this Franchise or other ordinances of the City. If the City incurs any costs and/or expenses for review, inspection or supervision of activities undertaken pursuant to this Franchise or any ordinances relating to a subject for which a permit fee is not established, New Cingular shall pay the City's reasonable costs and reasonable expenses. In addition, New Cingular shall promptly reimburse the City for any costs the City reasonably incurs in responding to any emergency involving New Cingular's Facilities. If the emergency involves the facilities of other utilities operating in the Right-of-Way, then the City will allocate costs among parties involved in good faith. Said costs and expenses shall be paid by New Cingular after submittal by the City of an itemized billing by project of such costs.

Section 18. Dangerous Conditions, Authority for City to Abate.

18.1 Whenever installation, maintenance or excavation of Facilities authorized by this Franchise causes or contributes to a condition that appears to substantially impair the lateral support of the adjoining Right-of-Way, public or private property, or endangers any person, the City may direct New Cingular, at New Cingular's expense, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.

18.2 In the event New Cingular fails or refuses to promptly take the directed action, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent injury or damages to persons or property, the City may take such actions as it believes are necessary to protect persons or property and New Cingular shall reimburse the City for all costs incurred.

Section 19. Safety.

19.1 New Cingular, in accordance with applicable federal, State, and local safety rules and regulations shall, at all times, employ ordinary care in the installation, maintenance, and repair of its Facilities utilizing methods and devices commonly accepted in their industry of operation to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property.

19.2 All of New Cingular's Facilities in the Right-of-Way shall be constructed and maintained in a safe and operational condition, in accordance with applicable federal, State, and local safety rules and regulations.

19.3 The City reserves the right to ensure that New Cingular's Facilities are constructed and maintained in a safe condition. If a violation of any applicable safety regulation is found to exist, the City will notify New Cingular in writing of said violation and establish a reasonable time for New Cingular to take the necessary action to correct the violation. If the correction is not made within the established time frame, the City, or its authorized agent, may make the correction. New Cingular shall reimburse the City for all reasonable costs incurred by the City in correcting the violation.

Section 20. Authorized Activities.

This Franchise is solely for the location, construction, installation, ownership, operation, replacement, repair, maintenance, acquisition, sale, lease, and use of the Facilities for providing Wireless Services. New Cingular shall obtain a separate franchise for any operations or services other than these authorized activities.

Section 21. Administrative Fee and Utility Tax.

21.1 Pursuant to RCW 35.21.860, the City is precluded from imposing franchise fees upon a telephone business, as defined in RCW 82.16.010, or a Service Provider for use of the Right-of-Way, as defined in RCW 35.99.010, except a utility tax or actual administrative expenses related to the franchise incurred by the City. New Cingular does hereby warrant that its operations, as authorized under this Franchise, are those of a Service Provider as defined in RCW 35.99.010.

21.2 New Cingular shall be subject to a \$5,000 administrative fee for reimbursement of costs associated with the preparation, processing and approval of this Franchise Agreement, including wages, benefits, overhead expenses, meetings, negotiations and other functions related to the approval. The administrative fee excludes normal permit fees required for work in the Right-of-Way. Payment of the one-time administrative fee is due 30 days after Franchise approval.

21.3 If RCW 35.21.860 is amended to allow collection of a franchise fee, this Franchise Agreement shall be amended to require franchise fee payments.

Section 22. [Intentionally omitted.]

Section 23. Indemnification.

23.1 New Cingular agrees to indemnify, save and hold harmless, and defend the City, its elected officials, officers, authorized agents, boards and employees, acting in official capacity, from and against any liability, damages or claims, costs, expenses, settlements or judgments arising out of, or resulting from the granting of this Franchise or New Cingular's activities, or any casualty or accident to Person or property that occurs as a result of any construction, excavation, operation, maintenance, reconstruction or any other act done pursuant to the terms of this Franchise, provided that the City shall give New Cingular timely written notice of its obligation to indemnify the City. New Cingular shall not indemnify the City to the extent any damages, liability or claims result from the City's negligence, willful misconduct, or breach of obligation of the City, its officers, authorized agents, employees, attorneys, consultants, or independent contractors for which the City is legally responsible, or for any activity or function conducted by any Person other than New Cingular.

23.2 In the event New Cingular refuses to undertake the defense of any suit or any claim, after the City's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and New Cingular's 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 New Cingular, then New Cingular shall pay all of the City's reasonable costs and reasonable expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause, as well as any judgment against the City.

Should a court of competent jurisdiction or such other tribunal as the parties agree shall decide the

matter, 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 New Cingular and the City, its officers, employees and agents, New Cingular's liability hereunder shall be only to the extent of New Cingular's negligence. It is further specifically and expressly understood that the indemnification provided in Section 23 of this Franchise constitutes New Cingular's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 24. Insurance.

24.1 Insurance Term. New Cingular shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may be caused, in whole or in part, by operations or activities performed by or on New Cingular's behalf with the issuance of this franchise.

24.2 No Limitation. New Cingular's maintenance of insurance as required by the agreement shall not be construed to limit the liability of New Cingular to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

24.3 Scope of Insurance. New Cingular shall obtain insurance of the types and coverage described below:

24.3.1 Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 or its equivalent and shall cover liability caused, in whole or in part, by operations, products-completed operations, and contractual liability. There shall be no specific exclusion for liability arising from explosion, collapse or underground property damage. The City shall be included as an additional insured under New Cingular's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.

24.3.2 Automobile Liability insurance if vehicles will be used in the performance of this contract, covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

24.4 Amounts of Insurance. New Cingular shall maintain the following insurance limits:

24.4.1 Commercial General Liability insurance shall be written with limits of \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

24.4.2 Automobile Liability insurance with a combined single limit for bodily injury and property damage of \$1,000,000 per accident.

24.5 Other Insurance Provision. New Cingular's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Applicant's insurance and shall not contribute with it.

24.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best

rating of not less than A-:VII.

24.7 Verification of Coverage. New Cingular shall furnish the City with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of New Cingular before issuance of the Permit.

24.8 Notice of Cancellation. New Cingular shall provide the City with written notice of any required policy cancellation or nonrenewal that is not replaced, within two business days of their receipt of such notice.

24.9 Failure to Maintain Insurance. Failure on the part of New Cingular to maintain the insurance as required shall constitute a material breach of the Franchise Agreement entitling the City to Liquidated Damages under Section 29, below, or such other and further relief provided for herein or by law. Alternatively, the City may, after giving thirty (30) days' notice to New Cingular to correct the breach, immediately terminate the Franchise.

24.10 Notwithstanding the foregoing, New Cingular shall have the right to self-insure the coverages required in subsection (a). In the event New Cingular elects to self-insure its obligation to include City as an additional insured, the following provisions shall apply (in addition to those set forth in subsection (a)): (i) New Cingular or its parent company shall have and continuously maintain a tangible net worth of at least two hundred million dollars (\$200,000,000.00); (ii) New Cingular continuously maintains appropriate loss reserves for the amount of its self-insurance obligations under this Section 24, which reserves are annually approved by Ernst & Young, or any successor auditing company; (iii) New Cingular shall undertake the defense of any self-insured claim for which a defense and/or coverage would have been available from the insurance company, including a defense of City, at New Cingular's sole cost and expense, with counsel selected by New Cingular and reasonably acceptable to City; (iv) New Cingular shall use its own funds to pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for New Cingular's election to self-insure; (v) New Cingular shall pay any and all amounts due in lieu of insurance proceeds which would have been payable if New Cingular had carried the insurance policies, which amounts shall be treated as insurance proceeds for all purposes under this Franchise; and (vi) All amounts which New Cingular pays or is required to pay and all loss or damages resulting from risks for which New Cingular has elected to self-insure shall not limit New Cingular's indemnification obligations set forth in this Franchise.

Section 25. Abandonment of New Cingular's Facilities.

No portion of the Facilities laid, installed, or constructed in the Right-of-Way by New Cingular may be abandoned by New Cingular without the express written consent of the City. Any plan for abandonment or removal of New Cingular's Facilities must be first approved by the Public Works Director, which shall not be unreasonably withheld or delayed, and all necessary permits must be obtained prior to such work.

Section 26. Restoration After Construction.

New Cingular shall, after any abandonment approved under Section 25 of this Franchise, or any installation, construction, relocation, maintenance, or repair of Facilities within the Franchise area, promptly complete all restoration work and promptly repair any damage caused by such work at its sole cost and expense. New Cingular agrees to complete all restoration in accordance with the approved permit issued by the City, consistent with the City's Engineering Design Standards, for

the work in question.

26.1 If New Cingular should fail to leave any portion of the excavation in a condition that meets the City's specifications per the CMC, the City may, on five (5) days' notice to New Cingular, which notice shall not be required in case of an Emergency Situation, cause all work necessary to restore the excavation to a safe condition. New Cingular shall pay to the City the reasonable cost of such work; which shall include, among other things, the City's overhead in obtaining completion of said work (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).

26.2 Any surface or subsurface failure occurring during the term of this Agreement caused by any excavation by New Cingular, normal wear and tear excepted, shall be repaired to the City's specifications, within thirty (30) days, or, upon five (5) days written notice to New Cingular, the City may order all work necessary to restore the damaged area to a safe and acceptable condition and New Cingular shall pay the reasonable costs of such work to the City, including City overhead (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).

26.3 In the event the work includes cutting and patching existing road surfaces resulting in the degradation of the projected lifespan of the roadway, New Cingular shall compensate the City for the reasonable projected costs resulting from the work, as estimated by the City Engineer or designee.

26.4 New Cingular agrees that if any of its actions under the Franchise materially impair or damage any City property, survey monument, or property owned by a third-party, New Cingular will restore, at its own cost and expense, the impaired or damaged property to the same condition as existed prior to such action. Such repair work shall be performed and completed to the reasonable satisfaction of the Public Works Director.

Section 27. Bond or Letter of Credit.

Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, New Cingular shall cause to be furnished a bond or Letter of Credit executed by a corporate surety or financial institution authorized to do business in the State of Washington, in a sum to be set and approved by the Director of Public Works, consistent with the provisions of the CMC, as sufficient to ensure performance of New Cingular's obligations under this Franchise. The bond shall be conditioned so that New Cingular shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise, and to erect or replace any defective work or materials discovered in the replacement of the City's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the City.

New Cingular may meet the obligations of this Section of this Franchise with one or more bonds acceptable to the City. In the event that a bond issued pursuant to this Section of this Franchise is canceled by the surety, after proper notice and pursuant to the terms of said bond, New Cingular shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section of this Franchise.

Section 28. Recourse Against Bonds and Other Security.

So long as the bond is in place, it may be utilized by the City as provided herein for reimbursement

of the City by reason of New Cingular's failure to pay the City for actual costs and expenses incurred by the City to make emergency corrections under Section 18 of this Franchise, to correct Franchise violations not corrected by New Cingular after notice, and to compensate the City for monetary remedies or damages reasonably assessed against New Cingular due to material default or violations of the requirements of City ordinances.

28.1 In the event New Cingular has been declared to be in default of a material provision of this Franchise by the City and if New Cingular fails, within thirty (30) days of mailing of the City's default notice, to pay the City any penalties, or monetary amounts, or fails to perform any of the conditions of this Franchise, or fails to begin to perform any condition that may take more than 30 days to complete, the City may thereafter obtain from the bond, after a proper claim is made to the surety, an amount sufficient to compensate the City for its damages. Upon such withdrawal from the bond, the City shall notify New Cingular in writing, by First Class Mail, postage prepaid, of the amount withdrawn and date thereof.

28.2 Thirty (30) days after the City's mailing of notice of the bond forfeiture or withdrawal authorized herein, New Cingular shall deposit such further bond, or other security, as the City may require, which is sufficient to meet the requirements of this franchise.

28.3 The rights reserved to the City with respect to any bond are in addition to all other rights of the City whether reserved by this Ordinance or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond shall constitute an election or waiver of any rights or other remedies the City may have.

Section 29. Liquidated Damages.

29.1 The City and New Cingular recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by the City as a result of New Cingular's breach of certain provisions of this Franchise. Accordingly, instead of requiring such proof, the City and New Cingular agree that New Cingular shall pay to the City, the sum set forth below for each day or part thereof that New Cingular shall be in breach of specific provisions of this Franchise. Such amount is agreed to by both parties as a reasonable estimate of the actual damages the City would suffer in the event of New Cingular's breach of such provisions of this Franchise.

29.1.1 Subject to the provision of written notice to New Cingular and a thirty (30) day right to cure period, the City may assess against New Cingular liquidated damages as follows: two hundred dollars (\$200.00) per day for any material breach of the Franchise.

29.1.2 The City shall provide New Cingular a reasonable extension of the thirty (30) day right to cure period described in Section 29.1.1 of this Franchise if New Cingular has commenced work to cure the violation, is diligently and continuously pursuing the cure to completion and requested such an extension, provided that any such cure is completed within one hundred and twenty (120) days from the written notice of default.

29.1.3 If liquidated damages are assessed by the City, New Cingular shall pay any liquidated damages within forty-five (45) days after they are assessed and billed.

29.1.4 In the event New Cingular fails to cure within the specified cure period, or any agreed upon extensions thereof, liquidated damages accrue from the date the City notifies New Cingular that there has been a violation.

29.2 The recovery of amounts under Section 29.1.1 of this Franchise shall not be construed to limit the liability of New Cingular under the Franchise or an excuse for unfaithful performance of any obligation of New Cingular. Similarly, the parties agree imposition of liquidated damages are not intended to be punitive, but rather, for City cost recovery purposes.

Section 30. Remedies to Enforce Compliance.

In addition to any other remedy provided herein, the City and New Cingular each reserve the right to pursue any remedy to compel the other to comply with the terms of this Franchise, and the pursuit of any right or remedy by a party shall not prevent such party from thereafter declaring a breach or revocation of the Franchise.

Section 31. Modification.

The City and New Cingular hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such amendment. City agreement shall be binding only upon City Council approval of any substantive alteration, amendment or modification of this Agreement.

Section 32. Force Majeure.

This Franchise shall not be revoked, nor shall New Cingular be liable for damages, due to any act or omission that would otherwise constitute a violation or breach that occurs without fault of New Cingular or occurs as a result of circumstances beyond New Cingular's reasonable control. Provided, however, New Cingular acts diligently to correct any such act or omission.

Section 33. City Ordinances and Regulations.

Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate lawful ordinances regulating the performance of the conditions of this Franchise, including any reasonable lawful 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 control, by appropriate lawful regulations, the location, elevation, and manner of construction and maintenance of any Facilities by New Cingular. New Cingular shall promptly conform to all such regulations, unless compliance would cause New Cingular to violate other requirements of law.

Section 34. Acceptance/Liaison.

New Cingular's written acceptance shall include the identification of an official liaison who will act as the City's contact for all issues regarding this Franchise. New Cingular shall notify the City of any change in the identity of its liaison.

Section 35. Survival.

All of the provisions, conditions and requirements of Sections 10, Relocation of Facilities; 14, Excavation And Notice Of Entry; 18, Dangerous Conditions; 23, Indemnification; 25, Abandonment of New Cingular's Facilities; and 26, Restoration After Construction, of this

Franchise shall be in addition to any and all other obligations and liabilities New Cingular may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to New Cingular and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the parties and all privileges, as well as all obligations and liabilities of each party shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever such party is named herein.

Section 36. Severability.

If any section, sentence, clause or phrase of this Franchise Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise Ordinance. In the event that any of the provisions of this Franchise Ordinance or of this Franchise are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this Franchise and may amend, repeal, add, replace or modify any other provision of this Franchise Ordinance or of the Franchise granted herein, or may terminate this Franchise.

Section 37. WUTC Tariff Filings, Notice Thereof.

If New Cingular intends to file, pursuant to RCW Chapter 80.28, with the Washington Utilities and Transportation Commission (WUTC), or its successor, any tariff affecting the City's rights arising under this Franchise, New Cingular shall provide the City with fourteen (14) days prior written notice.

Section 38. Binding Acceptance.

This Franchise shall bind and benefit the parties hereto and their respective successors and assigns.

Section 39. Assignment.

39.1 This Franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale or otherwise, without the written approval of the City. The City's approval shall not be unreasonably withheld or delayed. Any reasonable costs associated with the City's review of any transfer proposed by New Cingular shall be reimbursed to the City by the new prospective Franchisee, if the City approves the transfer, or by New Cingular if said transfer is not approved by the City.

39.2 Notwithstanding the foregoing, upon thirty (30) days' written notice, New Cingular may assign this Franchise or its rights or obligations to any person or entity controlling, controlled by, or under common control with New Cingular as of the date of such assignment.

Section 40. Alternate Dispute Resolution.

If the City and New Cingular are unable to resolve disputes arising from the terms of the Franchise granted herein, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to an alternate dispute resolution process in Clark County agreed to by the parties. Unless

otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

Section 41. Venue.

If alternate dispute resolution is not successful, the venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or Clark County Superior Court.

Section 42. 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 and acceptance hereof.

Section 43. Notice.

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

If to the City, the notice shall be sent to:

CITY OF CAMAS
City Administrator
616 NE 4th Avenue
Camas, WA 98607

If to New Cingular, the notice shall be sent to:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Site No. City of Camas Wireless Franchise Agreement (WA)
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319

With a copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept – Network Operations
Site No. City of Camas Wireless Franchise Agreement (WA)
208 S. Akard Street
Dallas, TX 75202-4206

Either party can alter their official address for notifications provided in this Section of this Franchise by providing the other party written notice thereof.

Section 44. Directions to City Clerk.

The City Clerk is hereby directed to publish this Ordinance in full and forward certified copies of this ordinance to New Cingular. New Cingular shall have thirty (30) days from receipt of the certified copy of this ordinance to execute this Franchise Agreement. If New Cingular fails to

execute this Franchise in accordance with the above provisions, this Franchise shall be null and void.

Section 45. Publication Costs.

New Cingular shall reimburse the City for the cost of publishing this Franchise ordinance within thirty(30) Days of receipt of the City's invoice.

Section 46. Effective Date.

This ordinance shall take effect and be in full force five (5) Days after the date of publication.

Signed by the duly authorized representative of the parties as set forth below:

New Cingular

City

New Cingular Wireless PCS, LLC
a Delaware limited liability company

City of Camas
a Washington Municipal Corporation

By: AT&T Mobility Corporation
Its: Manager

By: _____
Name: _____
Title: _____

_____ by Shannon Turk, Mayor

PASSED BY THE CITY COUNCIL ON _____, 2019.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**LICENSE AGREEMENT FOR
WIRELESS INSTALLATIONS ON PUBLIC STRUCTURES**

This License Agreement For Wireless Installations on Public Structures (“Agreement”) is made and entered into as of the Effective Date by and between the City of Camas (“Licensor”) and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company (“Licensee”).

RECITALS

WHEREAS, Licensee seeks to attach Wireless Installations to certain Structures and to utilize certain Infrastructure upon the terms and conditions set forth below;

WHEREAS, Licensor is willing to accommodate Licensee’s non-exclusive use of such Structures and Infrastructure in accordance with Laws and the terms and conditions of this Agreement; and

WHEREAS, concurrently with the execution of this Agreement, Licensor and Licensee are entering into a Franchise Agreement pursuant to which Licensee may construct, maintain, operate, replace and repair wireless communications facilities in, along, under, through and below Licensor’s public rights-of-way; and

WHEREAS, any capitalized terms in this Agreement shall have the meaning ascribed to them in Exhibit 1 attached hereto and incorporated herein by reference.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, receipt of which is hereby conclusively acknowledged, the Parties agree as follows:

1. GRANT OF LICENSE

1.1 Grant of License. To the extent not already governed by Laws, Licensor hereby grants Licensee a license for Licensee’s use of the Licensed Site as necessary to utilize, replace or upgrade Licensor’s Structures and Infrastructure, as provided herein and as provided in the individual Site License Agreements signed by the Parties pursuant to this Agreement. The license granted herein is revocable only in accordance with the terms and conditions of the Agreement. No use of Licensor’s Structures or Infrastructure under this Agreement shall create or vest in Licensee any ownership or property rights in such Structures or Infrastructure. Nothing in this Agreement grants Licensee the right to make any Wireless Installation, or to install other facilities, including Wireless Installations, that do not conform to this Agreement.

1.2 Permitted Use. Licensee may use Licensor’s Structures and Infrastructure for the Permitted Use, subject to the terms and conditions of this Agreement.

2. TERM

2.1 Agreement Term. This Agreement shall commence as of the Effective Date, and, if not lawfully terminated sooner, remain in full force and effect for the Agreement Initial Term. The Agreement will be automatically extended for three (3) successive five (5) year renewal terms, unless Licensee provides Licensor written notice of termination at least ninety (90) days prior to the expiration of the Agreement Initial Term or the then applicable renewal term, as the case may be.

2.2 Site License Agreement Term.

(a) The initial term for each individual Site License Agreement shall commence on the Commencement Date and shall be for the Site License Initial Term. Promptly following Licensee’s receipt of Licensor’s written request, the Parties shall confirm in an Acknowledgment the Commencement Date and expiration date of the Site License Initial Term.

(b) Each Site License Agreement shall be automatically extended for up to three (3) successive Site License Renewal Terms unless Licensee notifies Licensor in writing of Licensee’s intent not to renew the Site License at least thirty (30) days prior to the expiration of the Site License Initial Term or the then applicable Site License Renewal Term, as the case may be.

(c) Notwithstanding anything herein, no Site License Agreement which was signed during the Term of the Agreement shall survive beyond the expiration or earlier termination of this Agreement, it being the intent of the parties that each Site License Agreement shall be coterminous with this Agreement, and upon the expiration or earlier termination of this Agreement, Licensee shall submit to Licensor for its review and approval, which shall not be unreasonably withheld or delayed, Licensee's plan for abandonment or removal its Wireless Installations then attached to Licensor's Structures.

3. CHARGES, BILLING AND PAYMENT

3.1 Annual Fee.

(a) Licensee shall pay Licensor a Fee of Two Hundred Seventy and No/100 Dollars (\$270.00) per Wireless Installation located in Licensor's right-of-way for each year of the Site License Term. The Fee is per Wireless Installation, and includes all Structure, Infrastructure, appurtenant equipment and facilities used in connection with each Wireless Installation. Except in the event of a voluntary termination of a Site License Agreement pursuant to Section 13.4(b) below, the Fee will be prorated for any partial year based on a 360-day calculation.

(b) The Fee may be revised once per calendar year to an amount that is calculated pursuant to the terms and conditions of the FCC 2018 Order, calculated pursuant to a cost study which has been reviewed, adopted and approved by Licensor's City's Council and is not subject to further appeals or subject to a complaint before a competent regulatory agency or court. After the revised Fee is final as described in the preceding sentence, Licensor shall provide Notice to Licensee of the Fee in accordance with the notice requirements of this Agreement. The Fee payable under this Agreement will adjust to Licensor's Cost starting with Fee payments that are due at least 90 days after the date of such notice.

(c) Licensor hereby represents and warrants as of the date hereof and covenants and agrees from and after the date hereof that none of the rates or fees offered to any other entity with respect to Wireless Installations is or will be more favorable than the Fee under this Agreement. If Licensor agrees to a rate or fee that is more favorable than the Fee under this Agreement, Licensee shall be entitled under this Agreement to such rate or fee on and after the date such rate or fee becomes effective.

3.2 **Timing of Payment.** Licensee shall make the first payment of the Fee under any Site License Agreement within ninety (90) days of the full execution of the Acknowledgment. Thereafter, the Fee shall be paid on or before each anniversary of the Commencement Date during the Site License Term.

3.3 **Billing and Payment Generally.** All bills and other requests for payment to Licensor under this Agreement (other than the payment of the Fee) shall be presented in writing to Licensee and accompanied with reasonable substantiation of the costs incurred by Licensor. Properly presented invoices shall be paid by Licensee within ninety (90) days of receipt of invoice accompanied by such substantiation. All charges payable under this Agreement shall be billed by Licensor within one (1) year from the end of the calendar year in which the charges were incurred. Any charges beyond such period shall not be billed by Licensor, and shall not be payable by Licensee.

4. SITE LICENSE PROCESS

4.1 **Site License Application.** Subject to Section 4.4 below, before installing any new or additional Wireless Installation onto any Structure or utilizing any Infrastructure, Licensee shall apply for a Site License Agreement from Licensor using a Site License Application in the form attached as Exhibit 2. Licensee will identify in the Site License Application any Licensor Work it believes needs to be performed in connection with Licensee's use of the Structure and/or Infrastructure.

4.2 **Processing of Site License Application.** Unless Laws provide otherwise, Licensor will take reasonable steps to notify Licensee of the specific deficiencies in any Site License Application within ten (10) days of its submission, and Licensor will take reasonable steps to approve or reject each Site License Application within sixty (60) days of its submission for sites that have existing Poles, and ninety (90) days for Sites that do not have an existing Pole. Licensor may, on Technical Grounds, deny all or part of a Site License Application, or limit the number and/or technical characteristics (*e.g.*, weight or size) of any

Wireless Installation on any Structure or Infrastructure. In the event Licensor determines, based upon Technical Grounds, that inadequate space or structural capacity exists on its Structure(s) or inadequate space or capacity exists on its Infrastructure to accommodate any proposed Wireless Installation, Licensee may elect to have such Structure(s) replaced or upgraded as part of Licensor Work or such Infrastructure replaced or upgraded as part of Licensor Work, at Licensee's sole expense, with Structure(s) or Infrastructure with adequate space and structural capacity to accommodate the proposed Wireless Installation. In the event of rejection on Technical Grounds of a Site License Application, Licensor shall provide a written explanation to Licensee of the basis for the rejection. In the event that Licensor approves Licensee's Site License Application, then the Parties shall promptly proceed in good faith to sign and deliver a Site License Agreement for the Wireless Installation in the form attached as Exhibit 3 fully consistent with Licensor's approval of the Site License Application.

4.3 Consolidated Site License Application. For small cell networks involving Wireless Installations on multiple Structures and/or Infrastructure, Licensee may, in its discretion, file a consolidated application for utilization of multiple Structures and Infrastructure, and upon approval by Licensor, the Parties shall enter into a separate Site License Agreement for each approved Structure and/or Infrastructure location.

4.4 Modifications and Replacements. Except for any Wireless Installation installed upon a decorative Structure or upon a Structure located within either a scenic or historic district, subsequent to the original Wireless Installation approved by Licensor, Licensee may, without submitting a new Site License Application, modify or replace all or a portion of the Wireless Installation so long as such modification or replacement (a) results in the installation of equipment within the spaces designated or depicted in the Site License Application and (b) the resulting installation does not increase the load on the applicable Structure or the utilization of the Infrastructure beyond the loading or utilization, if any, that was established in the original Site License Application.

4.5 Pre-Approved Wireless Installations. Once a Wireless Installation design has become a Pre-Approved Wireless Installation for Licensee's use of a Structure and/or Infrastructure, then Licensee shall be allowed to install a Wireless Installation using any such Pre-Approved Wireless Installation without further land use review or approval by Licensor, subject to space and structural capacity and loading review by Licensor during the building permit review process. All other municipal reviews and approvals, including the execution of a Site License Agreement, building permits and right of way permits, shall apply to the installation of any Pre-Approved Wireless Installation.

5. LICENSOR WORK FOR STRUCTURES AND INFRASTRUCTURE

5.1 Licensor Work. At the time of approving the Site License Application, Licensor will advise Licensee whether Licensor is willing to perform Licensor Work identified in the Site License Application. If Licensor indicates it is willing to perform the Licensor Work, Licensor will provide Licensee with a Licensor Work Cost Estimate within fourteen (14) days of Licensor authorizing the Site License Agreement in accordance with Section 4.2, unless Laws provides a different deadline. Licensee shall have sixty (60) days from the receipt of such a Licensor Work Cost Estimate to accept the estimate, unless Laws provides a different deadline.

5.2 Licensor Work Timeline. Licensor will begin Licensor Work promptly after it has received Licensee's Approved Licensor Work Cost Estimate and full payment thereof and complete all Licensor Work within sixty (60) days thereafter. If Licensor does not indicate that it is willing to perform the Licensor Work, Licensee may perform the Licensor Work itself.

5.3 Licensor Work Reconciliation. If the actual and reasonable costs incurred by Licensor in completing a Licensor Work exceed the pre-paid Approved Licensor Work Cost Estimate, Licensee shall pay Licensor the shortfall amount of such costs within ninety (90) days of receipt of the invoice accompanied by reasonable substantiation. If such Licensor Work costs are less than the pre-paid Approved Licensor Work Cost Estimate, Licensor will refund the excess Licensor Work payment to Licensee within ninety (90) days following completion of the Licensor Work. No interest shall accrue on any Licensee overpayment or underpayment for Licensor Work

5.4 Costs To Rearrange/Adjust Facilities of Others. If a Person, other than Licensor, must rearrange or adjust any of its facilities to accommodate a new Wireless Installation, Licensee shall coordinate such activity at Licensee's sole expense; provided, however, that Licensee shall not be responsible for any third-party or Licensor costs necessary to correct third party or Licensor attachments that are non-compliant with Laws.

6. GENERAL LICENSEE OBLIGATIONS

6.1 Technical Requirements and Specifications. At its own expense, Licensee shall erect, install, repair and maintain its Wireless Installations in safe condition and good repair in accordance with (a) the requirements and specifications of Safety Codes; (b) Licensor's reasonable standards, and (c) any current or future rules or orders of the FCC, the State public utility commission, or any other federal, state or local authority having jurisdiction. Changes to the requirements, specifications, standards, rules and orders in subsections (a), (b) and (c) shall not apply retroactively unless required by Laws, and Licensor shall give at least sixty (60) days' written notice of changes to the standards in subsection (c).

6.2 No Liens. Licensee will not allow to exist any lien with respect to any Structure or Infrastructure or other Licensor property or facility resulting from any work performed by or on behalf of Licensee pursuant to this Agreement, or any act or claim against Licensee or any of its contractors, agents, or customers. Licensee will, at its sole expense, promptly bond or otherwise discharge any such lien within thirty (30) days of receipt of written notice from Licensor of the existence of such lien.

6.3 Worker Qualifications; Responsibility for Agents and Contractors. Each Party shall ensure that its employees, agents or contractors which perform work in furtherance of this Agreement are adequately trained and skilled to access Structures and Infrastructure in accordance with all applicable industry and governmental standards and regulations.

7. UTILITIES. Licensee shall install or cause to be installed a separate electric meter on a ground mounted pedestal or on Licensee's pad mounted equipment cabinet as required by the electric provider for the operation of its Equipment. Licensee shall be responsible for paying all charges for any electricity furnished by a utility Licensee furnishing service to the Equipment.

8. OPERATION AND MAINTENANCE

8.1. RF Emissions. Licensee's operation of its Wireless Installations will comply with all FCC regulations regarding RF emissions and exposure limitations. Licensee is allowed to install signage and other mitigation, such as a power cut-off switch on Structures, to allow workers and third parties to avoid excess exposure to RF emissions. Except in an Emergency, Licensor's authorized field personnel will contact Licensee's designated point of contact with reasonable advance notice, but in no event less than one (1) business day in advance, to inform Licensee of the need for a temporary power-shut-down. In the event of an unplanned outage or cut-off of power or an Emergency, the power-down will be performed with such advance notice as practicable. Once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform Licensee as soon as possible that power has been restored. The Parties acknowledge that they understand the vital nature of Licensee's Wireless Installations and agree to limit the frequency of power-downs and to restore power as promptly as much as reasonably possible.

8.2 Interference.

(a) Licensee will operate its Wireless Installations in compliance with all FCC regulations regarding Interference with the radio signal transmissions of Licensor and other third parties in or upon a Structure, which transmissions are operated in compliance with Laws.

(b) Licensor will not grant after the date of this Agreement a permit, license or any other right to any third party if, at the time such third party applies to use a Structure or Infrastructure, Licensor knows that such third party's use shall cause Interference with the Licensee's existing Wireless Installations, Licensee's use of the Structure or Infrastructure, or Licensee's ability to comply with the terms and conditions of this Agreement.

(c) Licensor will not, nor will Licensor permit its employees, invitees, agents or independent contractors to intentionally cause Interference with Licensee's existing Wireless Installations, Licensee's use of the Structure or Infrastructure, or Licensee's ability to comply with the terms and conditions of this Agreement. If Licensee reasonably determines that Interference is occurring, then Licensor will meet and confer with Licensee within five (5) days of Licensor's receipt of notice of Interference from Licensee, and otherwise diligently work in good faith with Licensee to determine the root cause of the Interference and to develop workable solutions to resolve the Interference in a mutually acceptable manner.

9. RELOCATION AND ABANDONMENT

9.1 Licensee agrees and covenants at no cost to Licensor, to relocate its Wireless Installations when requested to do so by Licensor for a public project, provided that, Licensee shall in all such cases have the privilege, upon approval by Licensor, to temporarily bypass, in the authorized portion of the same right of way any Wireless Installations required to be relocated.

9.2 If Licensor determines that a public project necessitates the relocation of Licensee's existing Wireless Installations, Licensor shall:

(a) At least seventy-five (75) days prior to the commencement of such project, provide Licensee with written notice of known Wireless Installations requiring such relocation; and

(b) Provide Licensee with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for Licensee's Wireless Installations.

(c) Meet with Licensee, if requested, within five (5) business days to discuss the scope, requirements and challenges of the relocation work.

9.3 After receipt of such notice and such plans and specifications and meeting, Licensee shall complete relocation of its Wireless Installations at no charge or expense to Licensor at least ten (10) days prior to commencement of the project.

9.4 Licensee may, after receipt of written notice requesting a relocation of its Wireless Installations, submit to Licensor written alternatives to such relocation. Licensor shall evaluate such alternatives and advise Licensee in writing as soon as practicable if any of the alternatives is suitable to accommodate the work that otherwise necessitates the relocation of the Wireless Installations. If so requested by Licensor, Licensee shall submit additional information to assist Licensor in making such evaluation. Licensor shall give each alternative proposed by Licensee as full and fair a consideration as the project schedule will allow. In the event Licensor ultimately determines that there is no other reasonable alternative, Licensee shall relocate its Wireless Installations as directed by Licensor and in accordance with this Section 9 of this Agreement.

9.5 Licensor will notify Licensee as soon as practical of any Wireless Installations that are not identified during the design of the public project, but are discovered during the course of construction and need to be relocated. Licensee will work with Licensor to design and complete a relocation to facilitate the completion of the public project with minimum delay.

9.6 Failure to complete a relocation requested by Licensor in accordance with this Section 9 of this Agreement by the date included in the notice provided for thereby may subject Licensee to liquidated damages as provided in Section 14 of this Agreement, except in the event Licensee suffers a force majeure or other event beyond its reasonable control. Alternatively, should Licensor's project be delayed as a result of Licensee's failure to complete a relocation requested in accordance with this Section 9 of this Agreement and provided Licensee has not suffered a force majeure or other event beyond its reasonable control, then Licensor may, at Licensee's sole expense, have the Wireless Installations relocated by Licensor's contractor. In such event, Licensee shall pay the cost of relocation within 30 days of submission of an invoice by Licensor. This Section shall only apply if applied in a non-discriminatory manner and it is necessary for all

Wireless Installations and appurtenances to be moved in the same location.

9.7 The provisions of this Section of this Agreement shall in no manner preclude or restrict Licensee from making any arrangements it may deem appropriate when responding to a request for relocation of its Wireless Installations by any person other than Licensor, where the improvements to be constructed by said person are not or will not become Licensor-owned, operated or maintained, provided that such arrangements do not unduly delay a Licensor construction project. The provisions of this Agreement are subject to RCW 35.99.060. In the event of a conflict between the provisions of this Agreement and the RCW, the RCW shall control.

9.8 Licensee recognizes the need for Licensor to maintain adequate width for installation and maintenance of sanitary sewer, water and storm drainage utilities owned by Licensor and other public utility providers. Thus, Licensor reserves the right to maintain clear zones within the public right of way for installation and maintenance of said utilities. The clear zones for each right of way segment shall be noted and conditioned with the issuance of each right of way permit. If adequate clear zones are unable to be achieved on a particular right of way, Licensee shall locate in an alternate right of way, obtain easements from private property owners, or propose alternate construction methods which maintain and/or enhance the existing clear zones.

9.9 No portion of the Wireless Installations attached to the Structures or Infrastructure by Licensee may be abandoned by Licensee without the express written consent of Licensor. Any plan for abandonment or removal of Licensee's Wireless Installations must be first approved by the Public Works Director, which shall not be unreasonably withheld or delayed, and all necessary permits must be obtained prior to such work.

10. INSURANCE

10.1 Insurance Term. Licensee shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may be caused, in whole or in part, by operations or activities performed by or on Licensee's behalf with the issuance of this Agreement.

10.2 No Limitation. Licensee's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Licensee to the coverage provided by such insurance, or otherwise limit Licensor's recourse to any remedy available at law or in equity.

10.3 Scope of Insurance. Licensee shall obtain insurance of the types and coverage described below:

(a) Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 or its equivalent and shall cover liability caused, in whole or in part, by operations, products-completed operations, and contractual liability. There shall be no specific exclusion for liability arising from explosion, collapse or underground property damage. Licensor shall be included as an additional insured under Licensee's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.

(b) Automobile Liability insurance if vehicles will be used in the performance of this contract, covering all owned, non-owned, hired and leased vehicles. Coverage shall be at

least as broad as Insurance Services Office (ISO) form CA 00 01.

10.4 Amounts of Insurance. Licensee shall maintain the following insurance limits:

(a) Commercial General Liability insurance shall be written with limits of \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

(b) Automobile Liability insurance with a combined single limit for bodily injury and property damage of \$1,000,000 per accident.

10.5 Other Insurance Provision. Licensee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect Licensor. Any Insurance, self-insurance, or self-insured pool coverage maintained by Licensor shall be excess of the Licensee's insurance and shall not contribute with it.

10.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A-VII.

10.7 Verification of Coverage. Licensee shall furnish Licensor with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of Licensee before issuance of the Permit.

10.8 Notice of Cancellation. Licensee shall provide Licensor with written notice of any required policy cancellation or nonrenewal that is not replaced, within two business days of their receipt of such notice.

10.9 Failure to Maintain Insurance. Failure on the part of Licensee to maintain the insurance as required shall constitute a material breach of the Agreement entitling Licensor to Liquidated Damages under Section 14, below, or such other and further relief provided for herein or by law. Alternatively, Licensor may, after giving thirty (30) days' notice to Licensee to correct the breach, immediately terminate this Agreement.

10.10 Self-Insurance. Notwithstanding the foregoing, Licensee shall have the right to self-insure the coverages required in subsection (a). In the event Licensee elects to self-insure its obligation to include Licensor as an additional insured, the following provisions shall apply (in addition to those set forth in subsection (a)): (i) Licensee or its parent company shall have and continuously maintain a tangible net worth of at least two hundred million dollars (\$200,000,000.00); (ii) Licensee continuously maintains appropriate loss reserves for the amount of its self-insurance obligations under this Section 10, which reserves are annually approved by Ernst & Young, or any successor auditing company; (iii) Licensee shall undertake the defense of any self-insured claim for which a defense and/or coverage would have been available from the insurance company, including a defense of Licensor, at Licensee's sole cost and expense, with counsel selected by Licensee and reasonably acceptable to Licensor; (iv) Licensee shall use its own funds to pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for Licensee's election to self-insure; (v) Licensee shall pay any and all amounts due in lieu of insurance proceeds which would have been payable if Licensee had carried the insurance policies, which amounts shall be treated as insurance

proceeds for all purposes under this Agreement; and (vi) All amounts which Licensee pays or is required to pay and all loss or damages resulting from risks for which Licensee has elected to self-insure shall not limit Licensee's indemnification obligations set forth in this Agreement.

11. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THE OTHER PARTY OR BY ANY CUSTOMER OR ANY PURCHASER OF SUCH PARTY OR ANY OTHER PERSON, FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER BY VIRTUE OF ANY STATUTE, IN TORT OR IN CONTRACT, EXCEPT THAT THE EXPRESS INDEMNIFICATION OBLIGATIONS MADE BY THE PARTIES IN SECTION 12 OF THIS AGREEMENT SHALL STILL APPLY.

12. INDEMNIFICATION

12.1 Licensee agrees to indemnify, save and hold harmless, and defend Licensor, its elected officials, officers, authorized agents, boards and employees, acting in official capacity, from and against any liability, damages or claims, costs, expenses, settlements or judgments arising out of, or resulting from the granting of this Agreement or Licensee's activities, or any casualty or accident to person or property that occurs as a result of any construction, excavation, operation, maintenance, reconstruction or any other act done pursuant to the terms of this Agreement, provided that Licensor shall give Licensee timely written notice of its obligation to indemnify Licensor. Licensee shall not indemnify Licensor to the extent any damages, liability or claims result from Licensor's negligence, willful misconduct, or breach of obligation of Licensor, its officers, authorized agents, employees, attorneys, consultants, or independent contractors for which Licensor is legally responsible, or for any activity or function conducted by any person other than Licensee.

12.2 In the event Licensee refuses to undertake the defense of any suit or any claim, after Licensor's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and Licensee's 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 Licensee, then Licensee shall pay all of Licensor's reasonable costs and reasonable expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause, as well as any judgment against Licensor.

Should a court of competent jurisdiction or such other tribunal as the parties agree shall decide the matter, determine that this Agreement 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 Licensee and Licensor, its officers, employees and agents, Licensee's liability hereunder shall be only to the extent of Licensee's negligence. It is further specifically and expressly understood that the indemnification provided in Section 12 of this Agreement constitutes Licensee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

13. DEFAULT AND TERMINATION

13.1 Licensee's Default and Licensor's Remedies. If Licensee does not cure its Default, then thereafter Licensor may elect any of the following remedies:

(a) suspend Licensee's access to the Structure or Infrastructure to which the Default pertains;

(b) terminate the specific Site License Agreement(s) or affected portion thereof covering the Structure(s) or Infrastructure to which the Default pertains;

(c) require Licensee's obligation to which the Default has been declared to be specifically performed; or

(d) maintain an action at law against Licensee for damages directly incurred by Licensor arising directly from Licensee's uncured Default.

13.2 Licensor's Default and Licensee's Remedies. If Licensor does not cure its Default, then thereafter, Licensee may elect to pursue any rights or remedies available to Licensee at law or in equity.

13.3 Voluntary Termination of Site License Agreement.

(a) A Site License Agreement may be terminated by Licensee for any reason or no reason, and without further liability to Licensee, at any time prior to the Commencement Date effective upon written notice to Licensor.

(b) A Site License Agreement may be terminated by Licensee after the Commencement Date for any reason or no reason effective upon the later of (i) thirty (30) days' following written notice to Licensor and (ii) the date of removal of the Wireless Installation. In the event Licensee has paid a Fee to Licensor for the use of the Licensed Site, then Licensor shall have the right to retain the Fee without refund or other credit to Licensee.

14. LIQUIDATED DAMAGES.

14.1 Licensor and Licensee recognize the delays, expense and unique difficulties involved in proving in a legal proceeding the actual loss suffered by Licensor as a result of Licensee's breach of certain provisions of this Agreement. Accordingly, instead of requiring such proof, Licensor and Licensee agree that Licensee shall pay to Licensor, the sum set forth below for each day or part thereof that Licensee shall be in breach of specific provisions of this Agreement. Such amount is agreed to by both parties as a reasonable estimate of the actual damages Licensor would suffer in the event of Licensee's breach of such provisions of this Agreement.

(a) Subject to the provision of written notice to Licensee and a thirty (30) day right to cure period, Licensor may assess against Licensee liquidated damages as follows: two hundred dollars (\$200.00) per day for any material breach of the Agreement.

(b) Licensor shall provide Licensee a reasonable extension of the thirty (30) day right to cure period described in Section 14.1(a) of this Agreement if Licensee has commenced work to cure the violation, is diligently and continuously pursuing the cure to completion and requested such an extension, provided that any such cure is completed within one hundred and twenty (120) days from the written notice of default.

(c) If liquidated damages are assessed by Licensor, Licensee shall pay any liquidated damages within forty-five (45) days after they are assessed and billed.

(d) In the event Licensee fails to cure within the specified cure period, or any agreed upon extensions thereof, liquidated damages accrue from the date Licensor notifies Licensee that there has been a violation.

14.2 The recovery of amounts under Section 14.1(a) of this Agreement shall not be construed to limit the liability of Licensee under the Agreement or an excuse for unfaithful

performance of any obligation of Licensee. Similarly, the parties agree imposition of liquidated damages are not intended to be punitive, but rather, for Licensor cost recovery purposes.

15. CASUALTY. In the event of damage to a Structure and/or Infrastructure due to a Casualty Event that cannot reasonably be expected to be repaired within forty-five (45) days following such Casualty Event or which Licensor elects not to repair, or if such Casualty Event is reasonably be expected to disrupt Licensee’s operations on the Structure and/or Infrastructure for more than forty-five (45) days, then Licensee may, at any time following such Casualty Event; (i) terminate the applicable Site License Agreement or affected portion thereof upon fifteen (15) days’ written notice to Licensor; (ii) place a temporary facility, if feasible, at a location equivalent to Licensee’s current use of the Structure and/or Infrastructure, as the case may be, until such time as the Structure and/or Infrastructure is restored and the Wireless Installation is returned to full on-air operation in the ordinary course of Licensee’s business; or (iii) submit a new Site License Application for an alternate location equivalent to Licensee’s current use of the Structure and/or Infrastructure, in which case Licensor shall waive the application fee and transfer all remaining rights to the new Structure and Infrastructure, as the case may be, as long as such relocation was due to a Casualty Event not caused by Licensee. If Licensee elects to terminate the Site License Agreement, notice of termination shall cause the applicable Site License Agreement or affected portion thereof to terminate with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the applicable Site License Agreement. Licensee will be entitled to collect all insurance proceeds payable to Licensee on account thereof, and to be reimbursed for any prepaid Fee on a pro rata basis. If Licensee does not elect to terminate the applicable Site License Agreement, then the Fee shall fully abate during the period of repair following such Casualty Event until the date that the Wireless Installation is returned to full on-air operation in the Licensed Site in the ordinary course of Licensee’s business.

16. MISCELLANEOUS PROVISIONS

16.1 Notices. All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the Parties as follows:

<p>If to Licensee (including invoices):</p> <p>New Cingular Wireless PCS, LLC Attn: Tower Asset Group – Lease Administration Re: Wireless Installation on Public Structures (City of ____) (__) FA No.: _____ 575 Morosgo Drive NE Atlanta, GA 30324</p>	<p>If to Licensor:</p> <p>City of Camas Attn: City Administrator 616 NE 4th Avenue Camas, WA 98607</p>
<p>With a copy to the AT&T Legal Department:</p> <p>New Cingular Wireless PCS, LLC Attn: AT&T Legal Dept. - Network Operations Re: Wireless Installation on Public Structures (City of ____) (__) FA No: _____ 208 S. Akard Street Dallas, TX 75202-4206</p>	

Contact Number for day to day operation:

Licensor: 1-360-834-6864

Licensee: 1-800-638-2822

Any Party may change its address or other contact information at any time by giving the other Party, and Persons named above, written notice of said change.

16.2 Force Majeure. This Agreement shall not be revoked, nor shall Licensee be liable for damages, due to any act or omission that would otherwise constitute a violation or breach that occurs without fault of Licensee or occurs as a result of circumstances beyond Licensee's reasonable control. Provided, however, Licensee acts diligently to correct any such act or omission.

16.3 Assignment and Transfer. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties. Except as otherwise provided in this Agreement, neither Party shall assign this Agreement or its rights or obligations to any firm, corporation, individual, or other entity, without the written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, upon thirty (30) days' written notice, either Party may assign this Agreement or its rights or obligations to (a) an Affiliate or (b) in connection with the sale or other transfer of substantially all of Licensee's assets in the FCC market area where the Structures are located.

16.4 Compliance with Laws. Licensee and Licensor agree to comply with all Laws.

16.5 Applicable Law. This Agreement shall be interpreted, construed, and enforced, in accordance with the laws of the state where the Structures are located without regard to its conflict of laws principles, and, where applicable, federal law.

16.6 Waiver of Jury Trial. Each Party waives its right to a trial by jury on disputes arising from this Agreement.

16.7 Change of Law. Either Party may, upon thirty (30) days' written notice, require that the terms of this Agreement which are affected by any New Law be renegotiated to conform to the New Law on a going forward basis for all existing and new Wireless Installations, unless the New Law requires retroactive application, except that, notwithstanding a New Law, the Fee shall remain unchanged for any Wireless Installations in place as of the time the New Law became effective. In the event that the Parties are unable to agree upon such new rates, terms of conditions within ninety (90) days after such notice, then any rates contained in the New Law shall apply as of the effective date of the New Law forward (except as to the Fee for any Wireless Installations in place as of the time the New Law became effective) until the negotiations are completed or a Party obtains a ruling regarding the appropriate conforming terms from a commission or court of competent jurisdiction. Except as provided in the preceding sentence, all terms in the existing Agreement shall remain in effect while the Parties are negotiating.

16.8 Exhibits. In the event of any inconsistency between the provisions of this Agreement and any Exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such incorporated Exhibits unless such Exhibit specifies otherwise.

16.9 Waiver; Severability. No provision of this Agreement may be waived except in a writing signed by both Parties. The failure of either Party to insist on the strict enforcement of any provision of this Agreement shall not constitute a waiver of any provision. If any portion of this Agreement is found to be unenforceable, the remaining portions shall remain in effect, and the Parties shall begin negotiations for a replacement of the invalid or unenforceable portion.

16.10 Survival. The terms and provisions of this Agreement that by their nature require performance by either Party after the termination or expiration of this Agreement, shall be and remain enforceable notwithstanding such termination or expiration of this Agreement for any reason whatsoever.

16.11 Entire Agreement; Amendments. This Agreement (including the Exhibits hereto) embodies the entire agreement between Licensee and Licensor with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings, oral or written, with respect thereto. Each Party acknowledges that the other Party has not made any representations other than those contained herein. This Agreement may not be amended or modified orally, but only by an

agreement in writing signed by the Party or Parties against whom any waiver, change, amendment, modification, or discharge may be sought to be enforced.

16.12 Execution in Counterparts. This Agreement may be executed in multiple counterparts, including by counterpart facsimiles or scanned email counterpart signature, each of which shall be deemed an original, and all such counterparts once assembled together shall constitute one integrated instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

City of Camas

**NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company**

**By: AT&T Mobility Corporation
Its: Manager**

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

EXHIBIT 1
DEFINED TERMS

As used herein, the following capitalized terms in the Agreement have the meaning ascribed to them below.

“Abandon” means to permanently relinquish ownership of a Structure and/or Infrastructure in its then existing location.

“Acknowledgment” means a written memorandum signed by the Parties confirming the Commencement Date and the date of expiration of the Site License Initial Term.

“Affiliate” means any entity that controls, is controlled by, or is under common control with a Party.

“Agreement Initial Term” means an initial term of ten (10) years.

“Annual Term” means a term of one (1) year.

“Approved Licensor Work Cost Estimate” means Licensee’s written approval of a Licensor Work Cost Estimate.

“Casualty Event” means any casualty, fire, act of God, or other harm affecting a Structure and/or Infrastructure licensed in whole or in part to Licensee pursuant to a Site License Agreement.

“Commencement Date” means the first day of the month following the day Licensee commences installation of the Wireless Installation at a particular location under a Site License.

“Days” means calendar days. If deadline or other date falls on a non-business day (including weekends, holidays recognized by the federal government, and holidays recognized by the state where the Structure is located), that date shall be extended to the next business day.

“Default” means the failure by a Party to perform any material term or condition of this Agreement where such failure continues for a period of more than thirty (30) days after receipt of written notice from the other Party of such failure identified with reasonable specificity as to the material term or condition of this Agreement which the Party is alleged to have failed to perform Notwithstanding the foregoing, no Default will be deemed to exist if a Party has commenced to cure the alleged failure to perform within such thirty (30) day period, and thereafter such efforts are prosecuted to completion with reasonable diligence. Delay in curing an alleged failure to perform will be excused if due to causes beyond the reasonable control of the Party again whom the failure to perform has been alleged.

“Effective Date” means the latest date in the signature blocks in the Agreement.

“Emergency” means a situation in which there is an imminent threat of injury to person or property, or loss of life.

“FCC” means the Federal Communications Commission.

“FCC 2018 Order” means the Federal Communications Commission’s Declaratory Ruling and Third Report and Order, FCC 18-133, Released September 27, 2018.

“Fee” means the annual payment for Licensee’s Permitted Use of the Structure and Infrastructure at the Licensed Site.

“Holdover Term” means a month to month term following the termination of a Site License Agreement.

“Infrastructure” means any and all forms of existing power supply, conduit, or other form of infrastructure fixtures or equipment for the delivery of power or communication services to a Structure or otherwise located in the public right of way or other location controlled or owned by Licensor.

“Interference” means any material and adverse physical obstruction or impairment with the radio signals or operation of Licensee’s Wireless Installation utilizing a Structure or Infrastructure authorized to be used by Licensee pursuant to Site License Agreement.

“Laws” means all federal, state and local laws, orders, rules and regulations applicable to Licensee’s use of the Wireless Installation on the Structure and/or Infrastructure and Licensor’s ownership and use of the Structure, Infrastructure and any other improvements or equipment in the public right of way, as the case may be.

“Licensed Site” means the areas approved for Licensee’s Permitted Use as described or depicted in a Site License Agreement.

“Licensee Indemnitees” means Licensee, its employees, affiliates, officers, directors, successors and assigns.

“Licensor Indemnitees” means Licensor, its officers, officials and employees.

“Licensor’s Cost” means Licensor’s cost calculated pursuant to the terms and conditions of the FCC 2018 Order.

“Licensor Work” means the work required on, in or to Licensor’s Structure and/or Infrastructure to accommodate Licensee’s Wireless Installation, including relocating, replacing, upgrading and/or reinforcing the existing Structure or Infrastructure.

“Licensor Work Cost Estimate” means Licensor’s written estimate of the estimated direct costs, including fully loaded labor costs to perform the Licensor Work in a Site License Application.

“NEC” means the National Electric Code.

“NESC” means the National Electrical Safety Code.

“New Laws” means any legislative, regulatory, judicial, or other action affecting the rights or obligations of the Parties, or establishing rates, terms or conditions for the construction, operation, maintenance, repair or replacement of Wireless Installation on public infrastructure or in the right-of-way, that differ, in any material respect from the rates, terms or conditions of the Agreement.

“Person” or “Persons” means any person or entity;

“Parties” means Licensor and Licensee collectively.

“Party” means individually Licensor and Licensee.

“Permitted Use” means the transmission and reception of communications signals, and the installation, construction, modification, maintenance, operation, repair, replacement and upgrade of the Wireless Installation necessary for the successful and secure use of the Licensor’s Structures and Infrastructure.

“Pre-Approved Wireless Installation” means any Wireless Installation design for Licensee’s use of a Structure and/or Infrastructure which has been approved in writing by Licensor.

“RF” means radio frequency.

“Safety Codes” means collectively the NEC, NESC, and any and all other applicable regulatory codes for safe practices when performing work on or near a Structure and/or Infrastructure.

“Site License Agreement” means the Site License Agreement attached as Exhibit 3.

“Site License Application” means an application by Licensee to use a Licensed Site in the form attached as Exhibit 2.

“Site License Initial Term” means an initial term of ten (10) years.

“Site License Renewal Term” means a renewal term of five (5) years upon the same terms and conditions as set forth in the applicable Site License.

“Site License Term” means collectively the Site License Initial Term, any Site License Renewal Terms, any Annual Terms and any Holdover Term.

“Technical Grounds” means, in light of prevailing industry engineering standards, reasons of insufficiency of capacity, safety, reliability and/or generally applicable engineering purposes consistent with applicable Laws.

“Term” means the Agreement Initial Term and any renewal terms exercised pursuant to Section 2.1 of the Agreement.

“Wireless Installation” means antennas, communications equipment, electric and communications cables, and related accessories and improvements, including facilities that operate on FCC-approved frequencies in the bands authorized for commercial wireless communication services pursuant to FCC licenses issued to Licensee, and all associated equipment, located in, under, upon, adjacent to or through a Structure or Infrastructure owned or controlled by Licensor pursuant to a Site License Agreement (in accordance with Section 4.2 hereof) approved in writing by Licensor.

**EXHIBIT 2
SITE LICENSE APPLICATION**

Page 1 of 2

			<u>Equipment Owner</u>			<u>Applicant (if different than Equipment Owner)</u>
Application Date:		Name:	New Cingular Wireless PCS, LLC		Name:	
Site Name/Project #:		Address:			Address:	
		Contact Name:			Contact Name:	
Approved by:		Phone #:			Phone #:	
Date:					Email:	

Approval of this application does not constitute as the permitting approval of the Wireless Installation; a separate application for permitting is required for construction and operation.

WIRELESS INSTALLATION - ATTACHMENT TO EXISTING STRUCTURE

Structure Pole #	Location/GPS Coordinates		Antenna Grade (Highest Point)	Antenna Dimensions (HxWxD)	Equipment Weight	Transmit Frequency	Receive Frequency	Output Power Level
	LAT	LONG						
Notes:								

**EXHIBIT 2
SITE LICENSE APPLICATION**

Page 2 of 2

WIRELESS INSTALLATION – STRUCTURE REPLACEMENT

Structure Pole #		Location/GPS Coordinates		Antenna Grade (Highest Point)	Antenna Dimensions (HxWxD)	Equipment Weight	Transmit Frequency	Receive Frequency	Output Power Level
		LAT	LONG						
Existing									
New									
Existing									
New									
Existing									
New									
Existing									
New									
Existing									
New									
Existing									
New									
Existing									
New									
Notes:									

EXHIBIT 3
FORM OF SITE LICENSE AGREEMENT

This is Site License Agreement, is made this _____ day of _____, 20____, between _____ [name of City/Town/Village/County/etc.] (“Licensor”) and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company (“Licensee”).

1. License Agreement for Wireless Installations on Public Structures. This Site License Agreement as referenced in that certain License Agreement for Wireless Installations On Public Structures, between Licensor and Licensee dated _____, 20____ (“Agreement”). Licensee has submitted a Site License Application pursuant to the Agreement, and Licensor has reviewed the application and grants approval subject to the terms of this Site License Agreement. All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction or inconsistency between the terms of the Agreement and this Site License Agreement, the terms of this Site License Agreement shall govern. Capitalized terms used in this Site License Agreement shall have the same meaning ascribed to them in the Agreement unless otherwise indicated herein.

2. Project Description and Locations. Licensee shall have the right to install and attach Wireless Installations on, under, and above the public right of way owned or controlled by Licensor, on, in and adjacent to the specific Structure and Infrastructure as identified and described in Exhibit 1 attached hereto (collectively the “Licensed Site”).

3. Term. The Site License Term of this Site License Agreement shall be as set forth in Section _____ of the Agreement.

4. Fee. The Fee shall be in the amount and otherwise payable in accordance with the Agreement as set forth in Section _____ of the Agreement.

5. Special Provisions, If Any (Specific to the Licensed Site).

[SIGNATURES APPEAR ON FOLLOWING PAGE]

LICENSOR:

City of Camas

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware Limited Liability Company

By: AT&T Mobility Corporation

Its: Manager

By: _____

Print Name: _____

Title: _____

Date: _____

EXHIBITS

- 1** Licensed Site, Wireless Installation Equipment List and Plans

EXHIBIT 1 TO SITE LICENSE AGREEMENT

Licensed Site, Wireless Installation Equipment List and Plans

Licensee Wireless Installation Reference: [LICENSEE TO COMPLETE]

FA / USID:

Site Name: CRAN_POLYGON NAME_NODE #

PTN / PACE:

Structure pole number: [LICENSOR TO COMPLETE]

Structure Latitude and Longitude (Approximate): [LICENSEE TO COMPLETE]

Wireless Installation Equipment List: [LICENSEE TO COMPLETE]

Wireless Installation Plans: See the attached plan set dated _____ 20__ prepared by _____ consisting of (____) page(s).



Staff Report

September 16, 2019 Council Workshop Meeting

Water Quality Standards Review

Staff Contact	Phone	Email
Steve Wall, Public Works Director	360.817.7899	swall@cityofcamas.us

SUMMARY: The Washington State Department of Ecology (DOE) and Federal Environmental Protection Agency are once again reviewing and talking about the State's Water Quality Standards and what's been commonly referred to as the "Fish Consumption Rule". More information on the topic in general and discussions between DOE and EPA can be found on the Association of Washington Cities website at: <https://wacities.org/advocacy/News/advocacy-news/2019/08/16/fish-consumption-rule-in-flux>

and at:

<https://www.epa.gov/wqs-tech/withdrawal-certain-federal-human-health-criteria-washington-proposed-rule>

City staff have been following the conversations and coordinating with staff at the City of Vancouver and Clark Regional Wastewater District (CRWWD). There is currently a comment period that is open until October 7, 2019 where agencies may submit written comments to EPA through the federal process. CRWWD has taken the lead in drafting a comment letter template that could potentially be used. Please see attached. Staff would like to review the topic in general and the draft letter with the City Council to see if there is a desire by Council to formally submit comments to EPA.

RECOMMENDATION: Staff requests Council's direction regarding submittal of a comment letter to the Environmental Protection Agency regarding the Water Quality Standards Fish Consumption Rule.

DATE

U.S. Environmental Protection Agency
EPA Docket Center, Water Docket
Mail code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention: **Docket ID No. EPA-HQ-OW-2015-0174**

RE: **Comments on Proposed Rule Regarding Withdrawal of Certain Federal Human Health Criteria in Washington**

Dear EPA Administrator Wheeler:

The City of Camas (City) is located in the eastern portion of Clark County in Southwest Washington. The City is providing written public comments with this letter for the above-referenced proposed rule, prior to the October 7, 2019 deadline.

The City understands that EPA has recently reconsidered the 2016 regulations developed and proposed by the Washington State Department of Ecology (Ecology) for human health criteria as part of the water quality standards applicable in Washington State. The City further understands that Ecology's multi-year process in developing the 2016 regulations worked to integrate and balance a wide array of public interests through stakeholder and public meetings. While elements of the 2016 Ecology regulations are still difficult, if not impossible, to attain with currently available technologies, we view the 2016 Ecology regulations as a more prudent public policy approach than the more stringent, and for certain parameters impractical, regulations EPA imposed at the end of 2016.

Balancing of interests is critical in this context as these regulations have sweeping implications for public utilities where the rules include requirement for legacy pollutants detectable at very low levels. In many cases, these compounds have been banned for years and treatment technologies are not available for these parameters, at any cost. This means utilities did not create or utilize these compounds and yet may be held legally and financially accountable through these rules for water quality outcomes that are often beyond the utility's authority, responsibility or control. Such impractical approaches will result in limited public dollars being spent on legal and other administrative process, rather than devoting the resources to improved services for our customers and better water quality for the environment.

For these reasons the City supports EPA's process to repeal the federal rule and rely on the extensive work that led to the Ecology 2016 standards. More work will be required to determine practical regulatory approaches for implementing even the Ecology rules. Any guidance EPA can provide to ensure realistic and achievable outcomes for utilities is very much appreciated.

Thank you for your time involved with this process and for the consideration of these comments.

Sincerely,

Signature

An aerial photograph of a coastal region. A wide river flows from the top left towards the bottom center. The land is divided into various colored parcels, including green, yellow, and brown, indicating different land uses or ownership. A large, dark green forested area is prominent in the middle. The background shows a hazy, distant landscape.

North Shore Subarea Plan

- 800 acres (approx.)
- 94% of land area has 11 owners
- 160 acres owned by the City
- Phase 1 – August to December
- Phase 2 – January to June

North Shore Subarea Plan

OUTREACH

Upcoming:

- Sept. 16th & 18th Stakeholder Interviews
- Sept. 25th Camas High School
- Nov. 6th Lacamas Lake Lodge

To date:

- Aug. 28th Discovery High School
- Sept. 11th Camas Farmers Market

Website camasnorthshore.com

- Survey online now!

