

**CITY OF MERCER ISLAND
ORDINANCE NO. 17-18**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
AMENDING ORDINANCE NO. 16-12 RELATING TO A NONEXCLUSIVE
TELECOMMUNICATIONS FRANCHISE GRANTED TO WA – CLEC
LLC TO INSTALL, CONSTRUCT, MAINTAIN, REPAIR AND OPERATE
SMALL CELL FACILITIES WITHIN THE PUBLIC RIGHTS OF WAY,
PROVIDING FOR SEVERABILITY AND RATIFICATION, AND
ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the City granted WA – CLEC LLC, ~~dba Crown Castle~~, a Delaware limited liability company (hereafter “Franchisee” or “Crown Castle”), a nonexclusive telecommunications franchise to install, construct, maintain, repair and operate small cell facilities within the City’s public rights-of-way; and

WHEREAS, the City granted Crown Castle the franchise by passing Ordinance No. 16-12, which referenced and adopted the Franchise Agreement between the City and Crown Castle; and

WHEREAS, the Franchise Agreement includes Exhibit C, which the parties intended would illustrate a typical Puget Sound Energy pole design, including the identification of certain use zones on electric utility poles; and

WHEREAS, the parties now desire to amend Exhibit C to more clearly illustrate the proposed locations for Crown Castle’s equipment on utility poles and to clarify the identification of certain use zones on electric utility poles;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: **Franchise Agreement Amended.** The Franchise Agreement between the City and Crown Castle that the Mercer Island City Council approved and adopted by passing Ordinance No. 16-12 is hereby amended as provided in the “First Amendment to Small Cell Facilities Franchise Agreement,” attached to this Ordinance as Attachment A, which the City Manager is hereby authorized to execute.

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

Section 3: **Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 4: Effective Date and Publication. Consistent with RCW 35A.47.040, this Ordinance, or a summary thereof, shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 5th day of July 2017 and signed in authentication of its passage.

CITY OF MERCER ISLAND



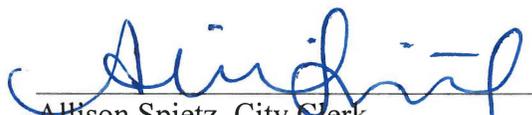
Bruce Bassett, Mayor

Approved as to Form:



Kari Sand, City Attorney

ATTEST:



Allison Spietz, City Clerk

Date of Publication: 7/12/17

ATTACHMENT A

FIRST AMENDMENT TO SMALL CELL FACILITIES FRANCHISE AGREEMENT

THIS FIRST AMENDMENT TO SMALL CELL FACILITIES FRANCHISE AGREEMENT (“Amendment”) is made by and between the City of Mercer Island (“City”) and WA-CLEC LLC (“Crown Castle”), effective on the date of the last signature below following approval of the Amendment by an ordinance of the Mercer Island City Council (“Effective Date”).

WHEREAS, the City and Crown Castle entered into the Small Cell Facilities Franchise Agreement effective on December 28, 2016 (“Agreement”); and

WHEREAS, the Agreement includes Exhibit C, which the parties intended would illustrate a typical Puget Sound Energy pole design, including the identification of certain use zones on electric utility poles; and

WHEREAS, the parties now desire to amend Exhibit C to more clearly illustrate the proposed locations for Crown Castle’s equipment on utility poles and to clarify the identification of certain use zones on electric utility poles;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Crown Castle agree as follows:

1. Defined Terms. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.
2. Replacement Exhibit C. The first page entitled “PSE Pole Diagrams” of Exhibit C to the Agreement is hereby deleted in its entirety and is replaced with the attached revised first page of Exhibit C.
3. Added to the End of Provision 4.2. The following shall be added to the end of Provision 4.2 of the Agreement:

Additionally, Crown Castle shall be subject to a second administrative fee in the amount of two thousand eight hundred and fourteen dollars (\$2,814.00) for reimbursement of costs associated with the preparation, processing and approval of the First Amendment to this Franchise. Payment of the second administrative fee is due within 30 days after the Mercer Island City Council’s approval of the First Amendment ordinance.

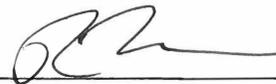
4. Remainder of Agreement Unaffected. In all other respects, the remainder of the Agreement shall remain in full force and effect. Any portion of the Agreement that is inconsistent with this Amendment is hereby amended to be consistent.

IN WITNESS WHEREOF, City and Crown Castle have caused this Amendment to be duly executed effective on the latest signature date below.

CITY OF MERCER ISLAND

WA - CLEC LLC

By: 

By: 

Name: Julie T. Underwood

Name: ROD HANSON

Title: City Manager

Title: VP/GENERAL MANAGER

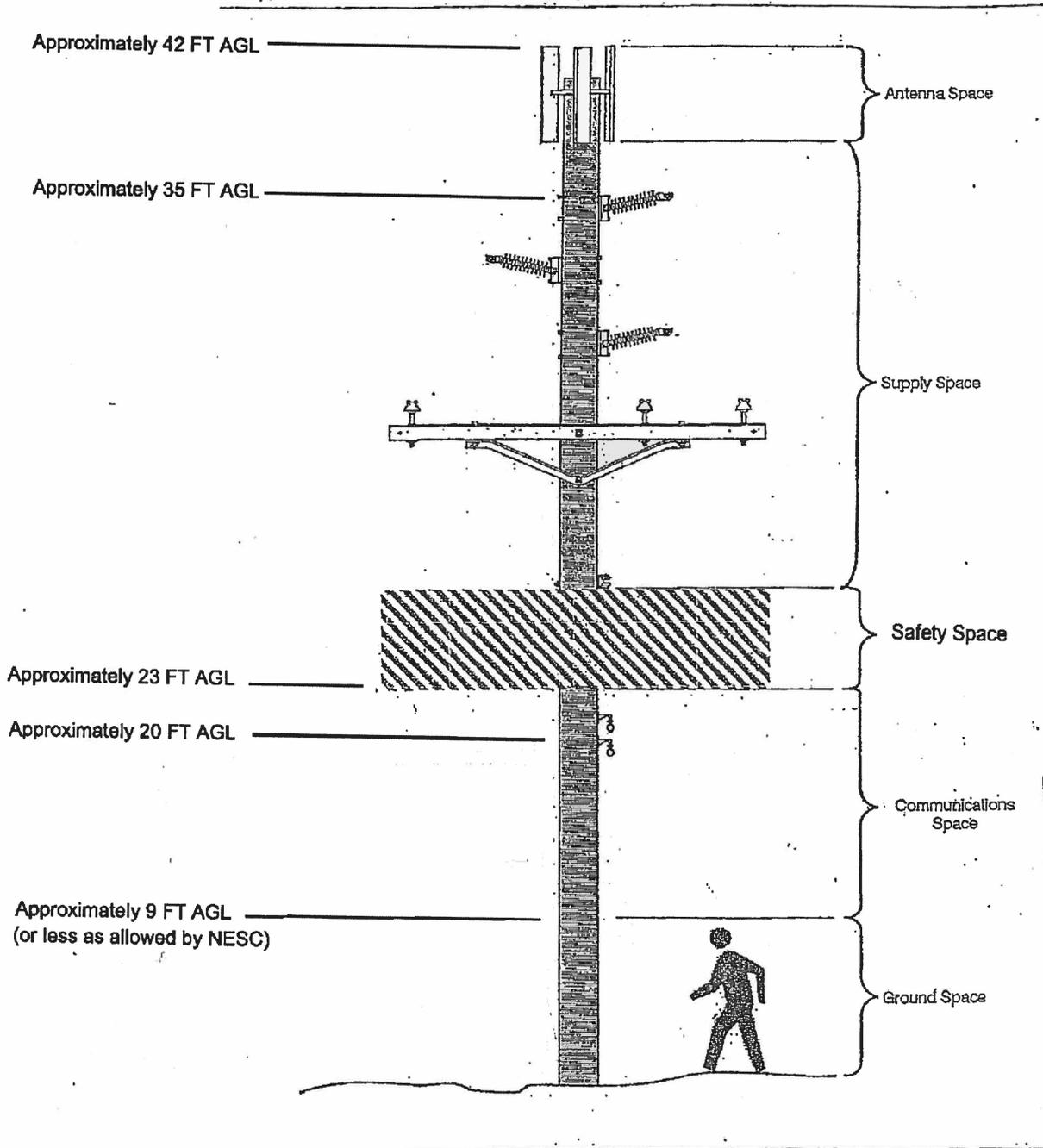
Date: 7/5/2017

Date: 7/11/2017

REVISED EXHIBIT C

EXHIBIT C

PSE Pole Diagrams



**CITY OF MERCER ISLAND
ORDINANCE NO. 16-12**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
GRANTING TO WA - CLEC LLC, A DELAWARE LIMITED LIABILITY
COMPANY, A NONEXCLUSIVE TELECOMMUNICATIONS FRANCHISE
TO INSTALL, CONSTRUCT, MAINTAIN, REPAIR, AND OPERATE
SMALL CELL FACILITIES WITHIN THE PUBLIC RIGHTS OF WAY**

WHEREAS, WA - CLEC LLC, d/b/a Crown Castle, a Delaware limited liability company (hereafter "Franchisee" or "Crown Castle") has made application to the City to construct, install, maintain, repair and operate a telecommunications system within the public rights-of-way of the City; and

WHEREAS, Crown Castle represents that it has the legal, technical and financial qualifications to operate in the rights-of-way of the City as a public telecommunications utility in Washington, holding a Registration from the Washington Utilities and Transportation Commission; and

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

WHEREAS, Crown Castle intends to install its small cell facilities within the rights-of-way on existing Puget Sound Energy ("PSE") utility poles; and

WHEREAS, Crown Castle warrants and represents that it has the requisite authority to construct, install and maintain its small cell facilities on PSE utility poles; and

WHEREAS, the City is authorized by state law to grant such nonexclusive franchises within the boundaries of the City; and

WHEREAS, City staff and Crown Castle have been working together to negotiate a franchise agreement allowing Crown Castle to install small cell facilities to fill significant gaps in its client's T-Mobile's coverage through the least intrusive means; and

WHEREAS, pursuant to RCW 35.21.860, the City is prohibited from imposing franchise fees upon a telephone business or "service provider" as defined in RCW 35.99.010, but can seek reimbursement for costs associated with the preparation, processing and approval of the franchise agreement, including wages, benefits, overhead expenses, meetings, negotiations, publication fees and other functions related to the approval of the franchise agreement; and

WHEREAS, the franchise agreement sets forth specific locational standards and priorities for locating small cell facilities in a manner that minimizes potential incompatibilities with adjacent uses; and

WHEREAS, the franchise agreement sets forth specific design standards to minimize the visual impacts of the small cell facilities by using the smallest antennas, equipment and equipment cabinets available to satisfy engineering requirements and the service objectives of the sites; and

WHEREAS, the design standards set forth are intended to be an existing concealment element in the determination of whether or not a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a);

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

Section 1. Adoption of Mercer Island Franchise Ordinance. The Mercer Island City Council hereby approves, adopts and directs the City Manager to execute the Franchise Agreement between the City of Mercer Island and WA - CLEC LLC in substantially the same form as attached hereto as Attachment A.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this Ordinance or its application to any other person, property or circumstance.

Section 3. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 4. Effective Date and Publication. Consistent with RCW 35A.47.040, this Ordinance, or a summary thereof, shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 5ⁿ day of DECEMBER, 2016, and signed in authentication of its passage.

CITY OF MERCER ISLAND



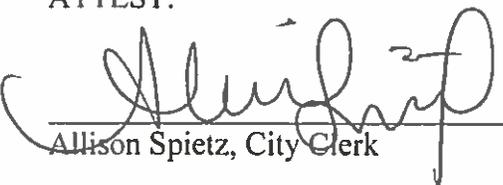
Bruce Bassett, Mayor

Approved as to Form:



Kari Sand, City Attorney

ATTEST:



Allison Spietz, City Clerk

Date of Publication: 12/14/2016

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange

On 12-22-16 before me, Mila Lynn Harris
(insert name and title of the officer)

personally appeared Ray Hanson
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

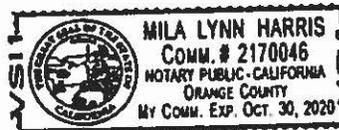
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

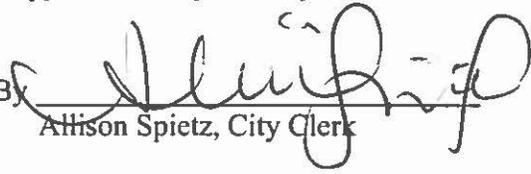
Signature



(Seal)



Copy received by the City of Mercer Island on DECEMBER 27, 2016

By 
Allison Spietz, City Clerk

**CITY OF MERCER ISLAND
SMALL CELL FACILITIES FRANCHISE AGREEMENT**

BY AND BETWEEN

THE CITY OF MERCER ISLAND

AND

WA - CLEC LLC, d/b/a Crown Castle

ATTACHMENT A TO ORDINANCE NO. 16-12

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1. DEFINITIONS

In addition to terms otherwise defined herein, the following definitions shall apply generally to the provisions of this Franchise:

1.1 Agency: Any governmental or quasi-governmental agency other than the City, including the Federal Communications Commission and the Washington Utilities and Transportation Commission (“WUTC”).

1.2 Crown Castle: Crown Castle shall mean WA - CLEC, LLC, a Delaware limited liability company and its lawful successors, assigns, and transferees.

1.3 Director: The head of the Development Services Group (or its successor department) of the City, or his/her designee.

1.4 Effective Date: This Franchise is effective on the date it is fully executed by both parties following approval of the Franchise by an ordinance of the Mercer Island City Council.

1.5 Flush-Mounted: The installation of antennas and equipment cabinets on a PSE Pole using brackets that offset the inside edge of such equipment from the PSE Pole by 5 inches or less, except as otherwise required by PSE and approved by the City.

1.6 Inventory of Facilities: An accurate and current inventory of all Small Cell Facilities approved by City pursuant to this Franchise and installed by Crown Castle, including sites that become inactive for any reason.

1.7 Laws: Any and all applicable federal, state and local statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements, including those of the City or any Agency having jurisdiction over the parties to this Franchise, in effect either as of the Effective Date or at any time during the presence of Crown Castle in the Right-of-Way. Notwithstanding anything to the contrary in this Franchise, Crown Castle will not be required to comply with any change in Laws where Crown Castle remains in conformance with the Laws in existence at the time this Franchise was entered into.

1.8 Nearest Feasible PSE Pole: The PSE Pole(s) which are within 100 feet of a PSE Pole that is included in a ROW Permit application, as long as such PSE Pole(s) are feasible for the installation of a Small Cell Facility, and the location and design of the Small Cell Facility on such PSE Pole(s) comply with the location and design preferences in Sections 6.3 and 6.4 of this Franchise.

1.9 Person: An individual, corporation, limited liability company, general or limited partnership, joint venture, business trust, or any other form of business entity or association.

1.10 PSE Pole: Any utility pole owned by PSE that is suitable for the installation of Small Cell Facilities. An Original PSE Pole is a pole that has not been replaced to accommodate Small Cell Facilities, but that is capable of accommodating Small Cell Facilities. A Replacement PSE Pole means a pole that replaces an Original PSE Pole to accommodate Small Cell Facilities and does not result in an increase in the total number of PSE Poles. Each reference to a PSE Pole herein shall be deemed to include any Original PSE Pole and any Replacement PSE Pole.

1.11 Right-of-Way: Land acquired by reservation, dedication, prescription or condemnation, and intended to be used as a road, sidewalk, utility line or other similar public use. This term shall not include county, state, or federal rights-of-way or any property owned by any person or agency other than the City of Mercer Island, except as provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency.

1.12 Services: Communications services offered by Crown Castle pursuant to its authority from the WUTC to provide competitive local exchange services.

1.13 Small Cell Facilities: The optical converters, remote radios, multiplexers, antennas, transmitters, receivers, backup power supplies, power transfer switches, cut-off switches, electric meters, coaxial cables, wires, telecom demarcation box and related materials and equipment (collectively the “Node”), and fiber optic cables, repeaters, splice cases and related materials and equipment (collectively the “Fiber”) to be installed and operated by Crown Castle hereunder at one or more individual pole locations as approved by City under this Franchise. Examples of typical Small Cell Facilities and installation configurations are shown in the drawings and photographs attached hereto as Exhibit B and incorporated herein by reference.

2. GRANT OF AUTHORITY

2.1 License to Use Rights-of-Way. Pursuant to RCW 35A.47.040, the City hereby grants Crown Castle a non-exclusive license to use the City’s Right-of-Way located approximately in the 39 locations listed in Exhibit A to attach, install, construct, operate, lease, maintain, repair, replace, reattach, reinstall, relocate, and remove its Small Cell Facilities, subject to the conditions outlined in this Franchise. Small Cell Facilities shall not unreasonably impair any improvement or interfere with the intended use of the City’s Right-of-Way. Crown Castle shall obtain permission to attach to any PSE Poles, conduits or related facilities.

2.2 This Franchise does not confer any other rights not described herein nor does it permit Crown Castle or parties contracted to use Crown Castle’s Small Cell Facilities to use the City’s Right-of-Way for purposes not specified in this Franchise. Nothing in this Franchise shall be deemed to grant, convey, create, or vest in Crown Castle a real property interest in land, including any fee, leasehold interest, or easement.

2.3 Any work performed pursuant to the rights granted under this Franchise must be subject to prior review and approval by the City in accordance with all applicable existing Laws.

3. TERM AND AMENDMENTS

3.1 Term. This Franchise shall commence on the Effective Date and extend for an initial term of 5 years (the “Initial Term”), unless it is earlier terminated by either Party in accordance with the terms of the Franchise.

3.2 Renewal. This Franchise may be renewed for an additional term of 5 years upon the terms and conditions set forth herein, unless either Party chooses not to renew. If either Party chooses not to renew this Franchise, the Party shall provide written notice to the other Party of its intent not to renew this Franchise at least 180 days prior to the expiration of the Initial Term.

3.3 Effect of Expiration of Franchise. Upon expiration of the Franchise, Crown Castle shall have up to 90 days following expiration in which to remove all of its Small Cell Facilities and related equipment from City Rights-of-Way, except as otherwise provided in Subsection 7.1. Within 30 days following expiration, Crown Castle shall provide the City with a schedule and timeline for removing the Small Cell Facilities. Thereafter, Crown Castle shall have no access to City Rights-of-Way for the purpose of installing any Small Cell Facilities.

3.4 Amendments. Either Party shall have the right to request an amendment of this Franchise on the 5th anniversary of the Effective Date and each renewal period thereafter, provided notice to amend is sent to the other Party no later than 90 days prior to the end of the Initial Term or then-effective Renewal Term. Any contractual amendments shall be approved by an ordinance of the City Council.

3.4.1 If the Parties have not reached agreement on contractual amendments by the end of the then-existing Term, the Parties may agree in writing to a temporary extension of the Franchise as appropriate and necessary to complete negotiations on proposed contractual amendments. If following negotiations, the Parties cannot reach agreement on contractual amendments, the City shall have the right to terminate this Franchise at the end of the agreed upon temporary extension period by providing written notice thereof to Crown Castle. In no event shall the City have the right to terminate this Franchise prior to the expiration of the Term due solely to the Parties failing to reach an agreement on an amendment to the Franchise requested by the City.

4. ADMINISTRATIVE FEES AND UTILITY TAX

4.1 Franchise Fees Prohibited by State Law. Pursuant to RCW 35.21.860, the City is prohibited 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. Crown Castle does hereby warrant that its operations, as authorized under this Franchise, are those of a Service Provider as defined in RCW 35.99.010.

4.2 Reimbursement of Costs. Crown Castle shall be subject to an administrative fee in the amount of thirteen thousand six hundred and thirty-one dollars (\$13,631.00) for reimbursement of costs associated with the preparation, processing and approval of this Franchise, including wages, benefits, overhead expenses, meetings, negotiations and other functions related to the approval. The administrative fee excludes normal permit fees required for the work in the City Right-of-Way. Payment of the one-time administrative fee is due within 30 days after the Mercer Island City Council's approval of the Franchise ordinance.

4.3 Changes in State Law. If RCW 35.21.860 is amended to allow collection of a franchise fee, this Franchise shall be amended to require franchise fee payments as allowed by Law or, if the amount of the franchise fee is not expressly set by such Law, by the amount agreed-upon by the Parties.

4.4 Provision of Dark Fiber to the City. Crown Castle agrees that at all times during the term of this Franchise it shall reserve 4 strands of unlit (dark) fiber owned by Crown Castle in the City Right-of-Way for the City's exclusive use in operating any noncommercial data network or communications function.

4.5 Electricity Charges. Crown Castle shall be solely responsible for the payment of all electrical utility charges to the applicable utility company based upon the Small Cell Facilities' usage of electricity and applicable tariffs.

5. APPROVAL OF SMALL CELL FACILITIES

5.1 Right-of-Way Permit. Crown Castle has applied for, and is required to obtain a City Right-of-Way permit ("ROW Permit") for the construction and installation of its each of its 39 Small Cell Facilities in the City Rights-of-Way identified in Exhibit A. The application for the ROW Permit includes, but is not limited to all of the following:

5.1.1 The ROW Permit Application fees;

5.1.2 A site plan that includes the property lines, adjacent City Rights-of-Way, private roads, and existing and proposed structures. The City may require the site plan to include all PSE Poles within 100 feet, if necessary. Maps shall be drawn at 1:20 scale;

5.1.3 Scaled elevations depicting the size and locations of proposed Small Cell Facilities on the PSE Pole;

5.1.4 Photo simulations of the Small Cell Facility site showing current and proposed conditions;

5.1.5 A tree plan, shown either on the site plan required in this Section 5.1.2 or on a separate tree plan, but only for those Small Cell Facilities where Crown Castle will prune any trees. The tree plan shall show the location, diameter, species of all significant trees (defined as conifers greater than 6 feet tall or deciduous trees greater than 6 inches in diameter at 4 ½ feet above the ground), clearly designate all eagle perch/nest trees, and draw an X through trees proposed to be removed or pruned. No trees may be pruned without the City's approval in the ROW Permit and shall be consistent with the requirements of Section 6.12 of this Franchise;

5.1.6 Engineering plans (if required by Law), and construction plans and drawings;

5.1.7 A document demonstrating compliance with all the applicable location and design criteria in Section 6 of this Franchise; and

5.2 Notice. The City shall send a notice of application to property owners within 150 feet of any proposed Small Cell Facility. The City shall notify parties of record of the City's action for such application. For purposes of this section, "parties of record" shall mean property owners who have commented on a notice of application.

5.3 Right-of-Way Determination. The City will determine whether the location of any PSE Pole identified by Crown Castle as a proposed location for its Small Cell Facilities is within City Right-of-Way. If it is not, the request would be outside the scope of the Franchise as City would not have authority to approve the application.

5.4 Inventory. Crown Castle shall maintain a current Inventory of Facilities throughout the Term of this Franchise. Crown Castle shall provide to City a copy of the Inventory no later than 180 days after the effective date of this Franchise, and shall be updated within 30 business days of a reasonable request by the City. The Inventory shall include GIS coordinates, date of installation, type of PSE Pole used for installation, description/type of installation for each Small Cell Facility installation and photographs taken before and after the installation of the Small Cell Facility and taken from the public street. Concerning Small Cell Facilities that become inactive, the Inventory shall include the same information as active installations in addition to the date the Facilities were deactivated and the date the Facilities were removed from the Right-of-Way. The City shall compare the Inventory to its records to identify any discrepancies, and the Parties will work together in good faith to resolve any discrepancies. Crown Castle will only be required to report one time on an Inventory any Facilities which were removed from the Right-of-Way.

5.5 Unauthorized Installations. Any Crown Castle Small Cell Facilities installations in the City Right-of-Way that were not authorized under this Franchise or other approval by the City ("Unauthorized Facilities") that are identified by the City as a result of comparing the Inventory to internal records or through any other means will be subject to the payment of an Unauthorized Facilities Charge by Crown Castle. City shall provide written notice to Crown Castle of any Unauthorized Facilities identified by City staff and Crown Castle

shall have 30 days thereafter in which to establish that this site was authorized. Failure to establish that the site is authorized will result in the imposition of an Unauthorized Facilities Installation Charge in the amount of \$1,000.00 per Unauthorized Facility per day starting on the 31st day. Crown Castle may submit an application to the City under this Franchise for approval of the Unauthorized Facilities. If the application for the Unauthorized Facilities is not approved based on applicable considerations under this Franchise or applicable Laws, Crown Castle shall remove the Unauthorized Facilities and any related facilities from the City's Right-of-Way within 30 days after the expiration of all appeal periods for such denial. The City shall not refund any assessed fines, unless Crown Castle is successful in an appeal.

5.6 Revocation. The Director may revoke Crown Castle's permission to use a licensed location listed in Exhibit A for Crown Castle's non-compliance with a term or terms of this Franchise subject to the same notice and right to cure procedures for a default in Section 13.4. The Director may amend or supplement Exhibit A as needed to remove the Small Cell Facilities subject to the revocation during the Term of this Franchise without approval from City Council.

6. CONSTRUCTION OF FACILITIES REQUIREMENTS

6.1 Compliance with Law Required. The work done by Crown Castle in connection with the installation, construction, maintenance, repair, and operation of Small Cell Facilities on PSE Poles within the City Right-of-Way shall be subject to and governed by all applicable Laws related to the construction, installation, operation, maintenance, and control of Crown Castle's Small Cell Facilities installed in the City's Right-of-Way. Crown Castle shall not attach, install, maintain, or operate any Small Cell Facilities or other equipment in or on the City's Right-of-Way without the prior approval of the City for each location.

6.2 Duty to Minimize Interference.

6.2.1 All PSE Pole excavations, construction activities, and aerial installations on PSE Poles in the City Rights-of-Way shall be conducted in a manner that minimizes interference with the use of the City's Rights-of-Way and with the use of private property, in accordance with all regulations of the City necessary to provide for public health, safety and convenience. Notwithstanding the non-exclusive nature of this Franchise, the City agrees that it will not grant the right to use the City Right-of-Way to any other franchisee or permittee if the City knows that such use is likely to physically interfere with or create electronic interference with Crown Castle's existing Small Cell Facilities in the City Right-of-Way.

6.2.2 If the City receives an application from another franchisee or permittee for the installation of Small Cell Facilities within 100 feet of Crown Castle's Small Cell Facilities approved herein, and the City reasonably believes such facilities might create physical or electronic interference with Crown Castle's Small Cell Facilities, then the City may instruct the other franchisee or permittee to provide written notice to Crown Castle of the proposed installation. The notice shall include

a description of the radio frequencies, power levels, direction of broadcast, location of the proposed installation and any other information that is reasonably necessary for Crown Castle and its customers to confirm whether there will be any physical or electronic interference with Crown Castle's Small Cell Facilities. Within 30 days after receipt of the notice required herein, Crown Castle shall notify the other franchisee or permittee and the City if there is reasonable cause to believe there will be physical or electronic interference from the proposed installation. If Crown Castle notifies the franchisee or permittee and the City that there will not be any interference, or if Crown Castle fails to respond within the 30 day period, the City shall have satisfied its duty to avoid interference with under this Section 6.2.

6.3 Location Priorities. This section establishes the City's priorities for locating Small Cell Facilities in the City's Rights-of-Way in a manner that minimizes potential incompatibilities with adjacent uses. The location priorities in this Section 6.3 shall be balanced with the design priorities in Section 6.4, and are subject to 47 U.S.C. § 332, which allows Crown Castle to use the least intrusive means to close a significant gap in wireless service in the City. When the location and design priorities are inconsistent for a proposed Small Cell Facility, the Director will implement the priorities in the following order: Trees, Views, then Streets.

6.3.1. Trees. On PSE Poles that are in a location in the following order of priority:

6.3.1.1 The installation will not require the pruning of trees or other vegetation; then

6.3.1.2 The installation of the Small Cell Facility will require pruning of trees or other vegetation, provided that any pruning shall be the minimum necessary, comply with Section 6.12 and shall not constitute a threat to the tree's or vegetation's health or safety in the opinion of the City Arborist.

6.3.1.3 Crown Castle shall not cut any trees for the installation of a Small Cell Facility. For purposes of this Franchise, "cut" means the intentional cutting of a tree to the ground or any practice or act which is likely to result in the death or significant damage to the tree.

6.3.2 Views. On PSE Poles in a location that minimizes the appearance of Small Cell Facilities from existing adjacent residential structures to the maximum extent feasible. Minimizing the appearance of Small Cell Facilities to the "maximum extent feasible" shall not require the installation of a new PSE Pole or relocating the Small Cell Facility to a PSE Pole more than 100 feet away from the proposed location.

6.3.3 Streets. On Public Rights-of-Way, in the following order of priority:

6.3.3.1 Major;

6.3.3.2 Secondary;

6.3.3.3 Collector; then

6.3.3.2 Local.

6.4 Design Requirements and Priorities. This section establishes the design requirements and priorities for Small Cell Facilities. For the 39 Small Cell Facilities listed on Exhibit A, the design requirements and priorities are intended to be concealment features when considering whether a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

6.4.1 No co-location. Each PSE Pole shall contain no more than one Small Cell Facility.

6.4.2 Antenna Design. Antennas shall measure no larger than 2 feet in height and 14 inches in width.

6.4.3 Antenna Location. Antennas shall be located in the following order of priority:

6.4.3.1 Within the communication space of the PSE Pole as illustrated in Exhibit C; then

6.4.3.2 A pole top extension to locate antenna equipment above the electrical conductor. Pole top extensions shall meet all PSE requirements and shall not extend beyond the top of the pole more than 48 inches.

6.4.4 Small Cell Facilities Cabinet Location and Dimensions. The equipment cabinets for Small Cell Facilities shall be located below the antennas in the communications space on the PSE Pole as illustrated in Exhibit C. The equipment cabinets for Small Cell Facilities shall not exceed 10 cubic feet in volume on any one PSE Pole for the 39 Small Cell Facilities listed on Exhibit A.

6.4.5 Replacement PSE Poles Height. Replacement PSE Poles shall not be more than 15% or 10 feet taller than the Original PSE Pole, whichever is less, except for guy poles which may be increased to a height equal to the surrounding PSE Poles upon a showing that the proposed height increase must be granted in order to allow Crown Castle to use the least intrusive means to close a significant gap in wireless service.

6.4.6 Other Design Priorities.

6.4.6.1 Color and Material. Small Cell Facilities antennas, conduit, mounting hardware and equipment cabinets shall be painted to match the color of the PSE Pole, or at the City's preference, Crown Castle shall paint

its Small Cell Facilities any color of the City's choosing, so long as the paint is reasonably commercially available. If Small Cell cabinets require a special heat-reducing paint finish, they shall be a neutral color such as brown, beige, off-white, or light gray.

6.4.6.2 Flush Mount. All Small Cell Facilities shall be Flush-Mounted.

6.4.6.3 No Illumination. Small Cell Facilities shall not be illuminated.

6.4.6.4 Concealed Wires. Small Cell Facilities' external cables and wires shall be enclosed in a conduit so that wires are protected and not visible or visually minimized to the maximum extent possible, except for the space between the conduit and the antennas and/or equipment cabinets.

6.5 Upgrading Design Requirements. Every 5 years following the Effective Date, Crown Castle and the City shall review Small Cell Facility size to ensure the visual impacts of Small Cell Facilities are consistent with the antennas, equipment and equipment cabinets then-available that will satisfy engineering requirements and the service objectives of the site. In the event the City reasonably determines following this review that smaller antennas, equipment and/or equipment cabinets are available and will satisfy engineering requirements and service objectives of the site, Crown Castle shall propose a plan to replace the identified Small Cell Facilities within 2 years of the City's determination. Any Small Cell Facilities not replaced within 2 years shall be deemed an "Unauthorized Installation" and shall be subject to the imposition of an Unauthorized Installation Charge on day 1 of year 3 as set forth in Section 5.5.

6.6 Underground District. If any PSE Poles at a licensed location are removed for the purpose of undergrounding the utilities during the Term of this Franchise, then Crown Castle shall comply with such undergrounding requirement as set forth in this subsection. Crown Castle agrees to underground its fiber and power, at its own expense, in the event all overhead utilities are undergrounded in an area in which Small Cell Facilities are installed. The City agrees that only fiber and power connections will be required to be undergrounded in underground utility districts.

6.7 Installation. Crown Castle shall, at its own cost and expense, install the Small Cell Facilities in a good and workmanlike manner and in accordance with the requirements promulgated by the Director, as such may be amended from time to time. Crown Castle's work shall be subject to the regulation, control and direction of the Director as allowed by Law. All work done in connection with the installation, operation, maintenance, repair, modification, upgrade, removal, and/or replacement of the Small Cell Facilities shall be in compliance with all Laws.

6.7.1 Inspections. The Director may perform visual inspections of any Small Cell Facilities located in the City Right-of-Way as the Director deems appropriate without notice. If the inspection requires physical contact with the Small Cell Facilities, the Director shall provide written notice to Crown Castle within 5

business days of the planned inspection. Crown Castle may have a representative present during such inspection.

6.7.2 Emergency. In the event of an emergency, the City may, but is not required to, notify Crown Castle of an inspection. The City may take action necessary to remediate the emergency situation, and the Director shall notify Crown Castle as soon as practically possible after remediation is complete.

6.8 Placement. Small Cell Facilities shall not impede pedestrian or vehicular traffic in the Right-of-Way. If Small Cell Facilities are installed in a location that is not in accordance with the plans approved by the Director and impedes pedestrian or vehicular traffic or does not comply or otherwise renders the City Right-of-Way non-compliant with applicable Laws, including the American Disabilities Act, then Crown Castle shall remove the Small Cell Facilities. Crown Castle shall be subject to a \$2,000 per day penalty for every day more than 10 business days after City has delivered written notice of such condition to Crown Castle until the Small Cell Facility is relocated to the correct area consistent with Exhibit A and/or the application materials, regardless of whether or not Crown Castle's contractor, subcontractor, or vendor installed the PSE Pole or Small Cell Facilities.

6.9 Electrical Supply. Crown Castle shall be responsible for obtaining any required electrical power service to the Small Cell Facilities. The City shall not be liable to Crown Castle for any stoppages or shortages of electrical power furnished to the Small Cell Facilities, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other tenant of the structure, or for any other cause beyond the control of the City.

6.10 Fiber Connection. Crown Castle shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its Small Cell Facilities.

6.11 Generators. Crown Castle shall not install any generators without the City's prior approval in accordance with Laws.

6.12 Pruning of Trees. Crown Castle shall make every effort to avoid unnecessary pruning of any trees or vegetation in the vicinity of the Small Cell Facilities. Crown Castle shall also make every effort to avoid damaging any trees or vegetation in the vicinity of the Small Cell Facilities.

6.12.1 Trees on Public Property.

6.12.1.1 Crown Castle, its contractors, and agents shall apply for a tree permit to prune a tree on public property in accordance with chapter 19.10 of the Mercer Island City Code (MICC) as now enacted or hereafter amended.

6.12.1.2 Crown Castle shall provide 7 days' advance notice to the City's Right-of-Way Manager before any pruning of trees on public property. Crown Castle shall also provide 7 days' advance notice to the adjacent property owners before pruning a tree on public property.

6.12.1.3 Any pruning shall be supervised by the City's Right-of-Way Manager or Arborist to minimize damage to the tree and to ensure best practices are employed.

6.12.1.4 All tree pruning operations should comply with the Manual on Uniform Traffic Control Devices (MUTCD) on temporary traffic control standards when utilizing the City's Right-of-Way.

6.12.2 Trees on Private Property. Crown Castle shall not prune any trees on private property, unless Crown Castle has the express, written permission of the property owner and a tree permit is obtained, if applicable.

6.12.3 The City shall not be liable for any damages, injuries, or claims arising from Crown Castle's actions under this section.

6.13 Graffiti Abatement. As soon as practical, but not later than 14 days from the date Crown Castle receives notice thereof, Crown Castle shall remove all graffiti on any of its Small Cell Facilities located in the City's Right-of-Way. The foregoing shall not relieve Crown Castle from complying with any City graffiti or visual blight ordinance or regulation.

6.14 Repairs. Whenever the installation, placement, attachment, repair, modification, removal, operation, use, or relocation of the Small Cell Facilities, or any portion thereof is required or permitted under this Franchise, and such installation, placement, attachment, repair, modification, removal, operation, use, or relocation causes any property of the City to be damaged or to have been altered in such a manner as to make it unusable, unsafe, or in violation of any Laws, Crown Castle, at its sole cost and expense, shall promptly repair and return such property to its original condition. If Crown Castle does not repair such property or perform such work as described in this paragraph, then the City shall have the option, upon 15 days' prior written notice to Crown Castle or immediately if there is an imminent danger to the public, to perform or cause to be performed such reasonable and necessary work on behalf of Crown Castle and to charge Crown Castle for the reasonable and actual costs incurred by the City. Crown Castle shall reimburse the City for its actual repair costs within 30 days after receiving the invoice from the City.

6.15 No Interference.

6.15.1 Crown Castle, in the performance and exercise of its rights and obligations under this Franchise shall not physically interfere in any manner with the existence and operation of any and all existing public and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other

telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Law or this Franchise.

6.15.2 If Crown Castle's Small Cell Facilities physically interfere with any of the activities enumerated within Section 6.15.1 above, then Crown Castle shall promptly cease operation of or relocate the Small Cell Facilities causing the interference upon receiving notice from the City. If, 10 days after receipt of written notice from the City of such interference, the Small Cell Facilities continue to interfere, such Small Cell Facilities may be deemed unauthorized and subject to the provisions of Section 5.5 of this Franchise.

6.15.3 Following installation or modification of Small Cell Facilities, the Director may require Crown Castle to test the Small Cell Facilities' radio frequency and other functions to confirm it does not interfere with the City's Operations or other equipment or property that are located within 10 meters of the Small Cell Facilities.

6.15.4 The City will include in any agreement or otherwise obligate other wireless services providers or communications services providers with permission from the City to use the Right-of-Way to provide wireless services to comply with the provisions of Section 6.15 of this Franchise to avoid, correct, and/or eliminate physical or harmful interference with Crown Castle's Small Cell Facilities.

6.15.5 The Parties acknowledge that the rules and regulations of the Federal Communications Commission regarding radio frequency interference apply to the terms of this Franchise.

7. ABANDONMENT, RELOCATION AND REMOVAL

7.1 Abandonment of Obsolete Facilities. Crown Castle shall remove or receive the City's permission to abandon Small Cell Facilities when such facilities are no longer used or useful regardless of whether or not it receives notice from the City. Unless the City sends notice that removal must be completed immediately to ensure public health, safety, and welfare, or that the Facilities may be abandoned, the removal must be completed within the earlier of 90 days of the Small Cell Facilities no longer being used or useful or within 90 days of receipt of written notice from the City. When Crown Castle removes or abandons permanent structures in the City Right-of-Way as allowed by this Franchise, Crown Castle shall notify the Director in writing of such removal or abandonment and shall file with the Director the location and description of each Small Cell Facility removed or abandoned. The Director may require Crown Castle to complete additional remedial measures necessary for public safety and the integrity of the City Right-of-Way. Small Cell Facilities not approved to be abandoned pursuant to this Section 7.1 shall be deemed an "Unauthorized Installation" and shall be subject to the imposition of Unauthorized Installation Charges as set forth in Section 5.5.

7.2 Removal Required by City.

7.2.1 Crown Castle shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable Small Cell Facilities within the time frame and in the manner required by the Director if he/she reasonably determines that the disconnection, removal, or relocation of any part of the Small Cell Facilities (a) is necessary to protect the public health, safety, welfare, or City property, (b) the Small Cell Facilities, or portion thereof, is adversely affecting proper operation of streetlights or City property, or (c) Crown Castle fails to obtain all applicable licenses, Permits, and certifications required by Law for its Small Cell Facilities, or use of any licensed location under this Franchise. If the Director reasonably determines that there is imminent danger to the public, then the City may immediately secure, adjust, disconnect, remove, or relocate the applicable Small Cell Facilities at Crown Castle's sole cost and expense.

7.2.2 The Director shall provide 90 days' prior written notice to Crown Castle before removing a Small Cell Facility under this Section 7.2, unless there is imminent danger to the public health, safety, and welfare.

7.2.3 Crown Castle shall reimburse the City for the City's actual cost of removal of Crown Castle's Small Cell Facilities or PSE Poles in accordance with this Franchise within 30 days of receiving an invoice from the City.

7.3 Removal, Abandonment or Relocation by Crown Castle.

7.3.1 If Crown Castle removes or relocates any Small Cell Facilities at its own discretion, it shall notify the Director in writing not less than 10 business days prior to removal or relocation. Crown Castle shall obtain all Permits required for relocation or removal of its Small Cell Facilities prior to relocation or removal. Crown Castle shall also update the Inventory of its Small Cell Facilities required in Section 5.4 within 30 days of such removal or relocation.

7.3.2 The City shall not issue any refunds for any amounts paid by Crown Castle for any reason for Small Cell Facilities that have been removed.

7.3.3 In the event Crown Castle desires to abandon any part of the Small Cell Facilities in the City Right-of-Way, it shall file a written request with the Director describing the nature and location of the Small Cell Facilities to be abandoned. The Director may allow, condition or deny, at the Director's sole discretion, Crown Castle's request. If the Director does not respond to Crown Castle's request within 60 days, the request shall be deemed approved.

7.4 Removal or Relocation Required for City Project.

7.4.1 Crown Castle understands and acknowledges that the City may require Crown Castle to remove or relocate its Small Cell Facilities, or any portion thereof,

from the City Right-of-Way, and Crown Castle shall, at the Director's direction, remove or relocate the same at Crown Castle's sole cost and expense, whenever the Director reasonably determines that the relocation or removal is needed for any of the following purposes:

7.4.1.1 Required for the construction, completion, repair, widening, relocation, or maintenance of, or use in connection with, any City construction or maintenance project.

7.4.1.2 Required to locate the utilities underground as set forth in this Franchise.

7.4.2 In any such case, the City shall use reasonable efforts to afford Crown Castle a reasonably equivalent alternate location, if available.

7.4.3 If Crown Castle fails to remove or relocate the Small Cell Facilities, or any portion thereof, as requested by the Director within 90 days of Crown Castle's receipt of the request, then the City shall be entitled to remove the Small Cell Facilities, or any portion thereof, at Crown Castle's sole cost and expense, without further notice to Crown Castle, and Crown Castle shall, within 30 days following issuance of invoice for the same, reimburse the City for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the Small Cell Facilities, or any portion thereof.

7.5 Removal Required After Termination or Expiration of Franchise. Within 30 days after termination or expiration of this Franchise, Crown Castle shall commence removal of all of Crown Castle's Small Cell Facilities from the City Right-of-Way and peaceably surrender the licensed location to City in the same condition the City Right-of-Way was in on the date the Permit was granted for that licensed location, excepting ordinary wear and tear. Removal of all of Crown Castle's Small Cell Facilities under this section shall be completed within 180 days. If Crown Castle fails to begin removal of the Small Cell Facilities on or before the 30th day after the Franchise expires or terminates or fails to complete removal within 180 days, the City may remove, store, or dispose of any remaining portion of the Small Cell Facilities in any manner the Director deems appropriate. Crown Castle shall, within 30 days after receipt of the City's written request and invoice, reimburse the City for all costs incurred by the City in connection therewith (including any reasonable overhead and storage expenses). The terms of this Section 7.5 shall not apply to Small Cell Facilities which may be abandoned in the City Right-of-Way pursuant to the written approval of the Director.

7.6 Removal Required After Revocation. Within 30 days after the date of the notice of revocation of a licensed location, Crown Castle shall commence removal of the Small Cell Facilities from the City Right-of-Way and peaceably surrender the licensed location to City in the same condition the City Right-of-Way was in on the date the Permit was granted for that licensed location, excepting ordinary wear and tear. If Crown Castle fails to complete removal within 90 days, the City may remove, store, or dispose of any remaining portion

of the Small Cell Facilities in any manner the Director deems appropriate. Crown Castle shall, within 30 days after receipt of the City's written request and invoice, reimburse the City for all costs incurred by the City in connection therewith, including any reasonable overhead and storage expense. The terms of this Section 7.6 shall not apply to Small Cell Facilities which may be abandoned in the City Right-of-Way pursuant to the written approval of the Director.

7.7 Ownership. The City agrees that no part of any Small Cell Facilities constructed, modified, or erected or placed within the City Right-of-Way by Crown Castle will become, or be considered by the City as being affixed to or a part of, the City Right-of-Way. All portions of the Small Cell Facilities constructed, modified, erected, or placed by Crown Castle on the City Right-of-Way will be and remain the property of Crown Castle and may be removed by Crown Castle at any time during or after the Term consistent with this Franchise.

7.8 Restoration. Crown Castle shall repair any damage to the City Right-of-Way, and the property of any third party resulting from Crown Castle's removal or relocation activities (or any other of Crown Castle's activities hereunder) within 10 days following the date of such removal or relocation, at Crown Castle's sole cost and expense, including restoration of the City Right-of-Way and such property to the same or better condition as it was immediately before the date Crown Castle was granted a Permit for the applicable licensed location, including restoration or replacement of any damaged trees, shrubs or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the Director.

7.9 Crown Castle Responsible. Crown Castle shall be responsible and liable for the acts and omissions of Crown Castle's employees, temporary employees, officers, directors, consultants, agents, affiliates, subsidiaries, sublicensees, sublessees, and subcontractors in connection with the performance of this Franchise, as if such acts or omissions were Crown Castle's acts or omissions.

8. INDEMINIFICATION AND INSURANCE

8.1 Indemnification. Crown Castle shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Crown Castle's use of the City's Rights-of-Way, or from the conduct of Crown Castle's business, or from any activity, work or thing done, permitted, or suffered by Crown Castle in or about the City Rights-of-Way, including, but not limited to, reasonable attorneys' fees and costs, except only such injury or damage as shall have been occasioned by the sole negligence of the City. This section shall survive the expiration or termination of the Franchise.

8.2 Insurance Term. Prior to the commencement of any work pursuant to this Franchise, Crown Castle shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Crown Castle's operation and use of the City's Rights-of-

Ways. Crown Castle shall file with the City evidence of insurance coverage satisfactory to the City with minimum coverage and limits of liability specified below.

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

8.4 Minimum Scope of Insurance. Crown Castle shall obtain insurance of the types and coverage described below:

8.4.1 Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability as applicable. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as additional an insured on Crown Castle's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing at least as broad coverage.

8.4.2 Property insurance shall be written on an all risk basis.

8.5 Minimum Amounts of Insurance. Crown Castle shall maintain the following insurance limits:

8.5.1 Commercial General Liability insurance shall be written with limits no less than \$3,000,000 each occurrence, \$5,000,000 general aggregate;

8.5.2 Property insurance shall be written covering the full value of Crown Castle's property and improvements with no coinsurance provisions;

8.5.3 Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased, or hired vehicles, as applicable, with a minimum limit of \$3,000,000 each accident for bodily injury and property damage; and

8.5.4 Workers' Compensation insurance for Washington State as required by Title 51 RCW Industrial Insurance.

8.5.5 The City may reasonably increase the minimum policy limits and coverage from time to time as the City deems appropriate to adequately protect the City and the public.

8.6 Additional Insured. The Commercial General Liability insurance policy and Excess of Umbrella liability insurance, if any, shall name the City, its elected officials, officers, and employees as additional insureds as respects any covered liability arising out

of Crown Castle's performance of this Franchise. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. Crown Castle shall be responsible for notifying the City of such change or cancellation.

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

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

8.9 Verification of Coverage. Crown Castle shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Crown Castle.

8.10 Failure to Maintain Insurance. Failure on the part of Crown Castle to maintain the insurance as required shall constitute a material breach of the Franchise, upon which the City may, after giving 5 business days notice to Crown Castle to correct the breach, terminate the Lease or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

9. SECURITY

9.1 Within 30 days of the execution of this Franchise, Crown Castle shall maintain and furnish to the Director a Security in favor of the City. "Security" means either an executed performance bond, letter of credit, or a bank or cashier's check made payable to the City, or other form of security acceptable to the Director for the purpose of protecting the City from the costs and expenses associated with Crown Castle's failure to comply with its material obligations under and throughout the life of this Franchise, including but not limited to, (a) the City's restoration of its Right-of-Way; (b) the City's removal of any of Crown Castle's Small Cell Facilities that are abandoned without the Director's approval or not properly maintained or that need to be removed to protect public health, safety, welfare, or City property; or (c) the City's remediation of environmental and hazardous waste issues caused by Crown Castle after Crown Castle receives reasonable notice from the City of any of the non-compliance listed above and opportunity to cure.

9.2 The amount of the Security shall be determined by mutual agreement by Crown Castle and the City Attorney/Director in writing.

9.3 The Bond, if any, must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Washington state. The surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability up to \$100,000.00, by a reinsurer listed on the U.S. Treasury list.

9.4 In the event the surety or party issuing the Security cancels or decides not to renew or extend the Security, Crown Castle shall obtain, and provide to the City Attorney for approval, a replacement Security with another surety, authorized to do business in Washington, within 30 days of the date the Security has been cancelled or non-renewed. If Crown Castle fails to provide the replacement Security within the 30-day period, the Director, after consulting with the City Attorney, may immediately suspend Crown Castle from any further performance under this Franchise and begin procedures to terminate for default pursuant to the terms of Section 13.4.

9.5 In the event that the City draws upon the Security, Crown Castle must replenish the amount of the Security within 30 days. Notwithstanding any provisions of this Franchise to the contrary, the Director shall be required to notify Crown Castle in writing as a precondition to drawing on, seeking payment under, or executing against the Security.

9.6 In the event that Crown Castle shall fully and faithfully comply with all of the terms of this Franchise, the City shall return the Security to Crown Castle within 60 days of the Franchise's expiration or termination, to the extent such Security is not otherwise applied consistent with this Franchise.

10. RECORDS AND REPORTS

10.1 Crown Castle shall maintain Records of its operations under this Franchise that are open and accessible to the City. The City shall have the ability to inspect such Records of Crown Castle as are reasonably necessary to monitor compliance with the Franchise at a local office during Normal Business Hours and upon reasonable notice. Such notice shall specifically reference the Section of the Franchise that is under review, so that Crown Castle may organize the necessary books and records for easy access by the City. Such notice shall not apply to the Public Records File required by the Federal Communications Commission. If any such Records are under the control of an affiliated entity or a third party or are stored in a computer, Crown Castle shall promptly take steps to secure access to such records as are reasonably necessary for the City's inspection. Alternatively, if the books and records are not easily accessible at the local office of Crown Castle, Crown Castle shall pay the reasonable travel costs of the City's representative to view the books and records at the appropriate location.

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

10.3 Crown Castle may identify documents submitted to the City that Crown Castle believes are non-disclosable, such as trade secrets. Crown Castle shall prominently mark

any document for which it claims confidentiality with the mark “Confidential,” in letters at least one-half (1/2) inch in height, prior to submitting such document to the City. The City shall treat any document so marked as confidential and will not disclose it to Persons outside of the City, except as required by law and as provided herein. If the City receives a public disclosure request for any documents or parts of documents that Crown Castle has marked as “Confidential,” the City shall provide Crown Castle with written notice of the request, including a copy of the request. While it is not a legal obligation, the City, as a courtesy, will allow Crown Castle up to 10 business days to obtain and serve the City with a court injunction to prevent the City from releasing the documents. If Crown Castle fails to obtain a Court order and serve the City within the 10 business days, the City may release the documents. The City will not assert an exemption from disclosure or production on Crown Castle’s behalf.

11. EQUAL EMPLOYMENT

11.1 Non-Discrimination in Employment and Benefits. During the performance of this Franchise, Crown Castle agrees as follows:

11.1.1 Crown Castle shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, age, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification or any other unlawful basis. Crown Castle will make affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, age, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but are not limited to, the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

11.1.2 Crown Castle shall substitute the name of the subcontractor wherever the word “Crown Castle” appears in Subsection 11.1.1 and insert these revised provisions in all subcontracts for work covered by this Franchise.

11.1.3 By acceptance of this Franchise, Crown Castle is affirming that it complies with all applicable federal, state, and local non-discrimination laws.

11.2 Women and Minority Business Enterprises (“WMBE”).

11.2.1 Crown Castle shall use good faith efforts to promote and seek utilization of women and minority businesses for any subcontracting opportunities that arise in connection with this Franchise. Prior to commencing construction, Crown Castle shall report to the City in writing its compliance with this Subsection 11.2.1.

11.2.2 Efforts may include the use of solicitation lists, advertisements in minority community publications, breaking requirements into tasks or quantities that promote WMBE utilization, making schedule or requirement modifications likely to assist WMBE firms, targeted recruitment, and using minority community and public organizations to perform outreach.

11.2.3 Record-Keeping: Crown Castle shall maintain, for at least 24 months after the expiration or earlier termination of this Franchise, relevant records and information necessary to document all Crown Castle's solicitations to subcontractors and suppliers, all subcontractor and supplier proposals received, and all subcontractor and suppliers actually utilized in meeting Crown Castle's Franchise obligations. The City shall have the right to inspect and copy such records.

11.2.4 Crown Castle shall ensure that all employees, particularly supervisors, are aware of, and adhere to, their obligation to maintain a working environment free from discriminatory conduct, including, but not limited to, harassment and intimidation of women or minority businesses.

11.2.5 Non-Discrimination: Crown Castle shall not create barriers to open and fair opportunities for WMBEs to participate in any City contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.

12. TRANSFER OR ASSIGNMENT

12.1 Neither Crown Castle nor any other Person may transfer the Facilities or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No change in control of Crown Castle, defined as an acquisition of 50% or greater ownership interest in Crown Castle, shall take place without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (a) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of Crown Castle in the Franchise or in the Facilities in order to secure indebtedness, or (b) a transfer to an affiliated entity directly or indirectly owned or controlled by Crown Castle or its parent entities. Within 30 days of receiving a request for consent, the City shall, in accordance with FCC rules and regulations, notify Crown Castle in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the City has not taken action on Crown Castle's request for consent within 120 days after receiving such request, consent shall be deemed given.

12.2 Except as allowed in this Section 12, the Small Cell Facilities and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person without the prior written consent of the City, which consent shall not be unreasonably withheld.

12.3 Crown Castle shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of Crown Castle. The word “control” as used herein is not limited to majority stock ownership but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of Crown Castle shall make this Franchise subject to cancellation unless and until the City shall have consented thereto.

12.4 The parties to the sale, transfer or change of control shall make a written request to the City for its approval of a sale, transfer or change of control and shall furnish all information required by applicable law.

12.5 The City may condition the transfer of this Franchise upon such terms and conditions as it deems reasonably appropriate, including, for example, any adequate guarantees or other security, as allowed by applicable law. Additionally, the prospective controlling party or transferee shall effect changes as promptly as practicable in the operation of the Facilities, if any changes are necessary, to cure any violations or defaults presently in effect or ongoing.

12.6 The City shall act by ordinance or resolution on the request within 120 days of the request, provided it has received all information required by applicable law. Subject to the foregoing, if the City fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

12.7 Within 30 days of any transfer, sale or change of control, if approved or deemed granted by the City, Crown Castle shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Crown Castle and the transferee or new controlling entity. In the event of a sale or transfer of ownership, the transferee shall also file its written acceptance agreeing to be bound by all of the provisions of this Franchise. In the event of a change in control, in which Crown Castle is not replaced by another entity, Crown Castle will continue to be bound by all of the provisions of the Franchise and will not be required to file an additional written acceptance. The approval of any change in control shall not be deemed to waive any rights of the City to subsequently enforce noncompliance issues relating to this Franchise.

12.8 Notwithstanding the foregoing, the City’s consent shall not be required for a hypothecation or an assignment of Crown Castle’s interest in the Franchise in order to secure indebtedness or for a transfer to an intra-company affiliate, provided that Crown Castle must reasonably notify the City within 30 days and the affiliate must have the requisite legal, financial and technical capability.

13. GENERAL PROVISIONS

13.1 Compliance with Laws. Notwithstanding anything to the contrary in this Franchise, each Party shall ensure that any and all activities it performs pursuant to this Franchise

shall comply with all applicable Laws, including but not limited to: (a) worker's compensation laws, (b) unemployment compensation laws, (c) the Federal Social Security Law, (d) the Fair Labor Standards Act, and (e) all Laws relating to environmental matters and occupational safety.

13.2 Force Majeure. Except for payment of amounts due, neither Party shall have any liability for its delays or its failure of performance due to: fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes beyond its control, whether or not similar to the foregoing.

13.3 Notices. All notices pursuant to this Franchise shall be in writing and delivered personally or transmitted either: by (i) U.S. Postal Service registered or certified mail, postage pre-paid; or (ii) pre-paid overnight delivery service. Notices shall be deemed given upon receipt in the case of personal delivery, 3 days after deposit in the mail, or the next day in the case of overnight delivery. All notices shall be sent to at the following addresses, provided that either Party may from time to time designate any other address for this purpose by written notice to the other Party delivered in the same manner set forth above.

If to City:

City of Mercer Island
City Hall
9611 SE 36th Street
Mercer Island, WA 98040
Attn: City Manager

If to Crown Castle:

WA – CLEC LLC
c/o Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317
Attn: Ken Simon, General Counsel

With a copy to:

WA – CLEC LLC
c/o Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317
Attn: SCN Contracts Management

24/7 emergency contact number:

(206) 275-7610

24/7 emergency contact information:

Telephone: (888) 632-0931
Email: SCN.NOC@crowncastle.com

13.4 Termination.

13.4.1 Termination for Cause by City. If Crown Castle defaults under this Franchise, the City may terminate this Franchise subject to Crown Castle's ability to cure such defaults below. Default by Crown Castle includes, but is not limited to:

13.4.1.1 Failure of Crown Castle to comply with any material term of this Franchise;

13.4.1.2 Crown Castle becomes insolvent;

13.4.1.3 Crown Castle's failure to obtain all licenses, Permits, and certification required by the City under this Franchise (to the extent not unreasonably withheld by the City) and pay all fees associated therewith after the City has notified Crown Castle that licenses, Permits, and certifications must be obtained to work in the City Right-of-Way;

13.4.1.4 All or a substantial part of Crown Castle's assets are assigned for the benefit of its creditors;

13.4.1.5 A receiver or trustee is appointed for Crown Castle; or

13.4.1.6 Crown Castle fails to install any Small Cell Facilities in the City Right-of-Way within 1 year of the Effective Date of this Franchise.

13.4.2 If a default occurs, the City shall deliver a written notice to Crown Castle describing the default and the proposed termination date. If the City sends a default notice, Crown Castle shall have 60 days from the receipt of such notice to cure the default (unless the nature of the event takes longer to cure and Crown Castle commences a cure within such 60 day period and thereafter diligently pursues it, but will not exceed 180 days unless agreed to by the City, which agreement will not be unreasonably withheld). If Crown Castle cures the default before the proposed termination date, the proposed termination is ineffective.

13.4.3 If the default is not cured in the time and manner set out above, then the City may immediately terminate this Franchise by notifying Crown Castle in writing of such termination. After receiving the notice, Crown Castle shall immediately cease operations and remove its Small Cell Facilities from the City Right-of-Way in accordance with Section 7 of this Franchise, and any payment due shall be remitted by Crown Castle within 30 days of the receipt of the notice to the address in the Section 13.3 of this Franchise.

13.5 Governing Law. This Franchise shall be governed and construed by and in accordance with the laws of the state of Washington without regard to its conflict of law provisions.

13.6 Venue. Any litigation between the City and Crown Castle arising under or regarding this Franchise shall occur if in the state courts, in the King County Superior Court, and if in the federal courts, in the United States District Court for the Western District of Washington.

13.7 Interpretation. All headings contained in this Franchise are inserted for convenience only and are not intended to affect the meaning or interpretation of this Franchise or any clause. All exhibits referred to in this Franchise and any addenda, attachments, and schedules which may from time to time be referred to in any duly executed amendment to this Franchise are by such reference incorporated in this Franchise

and shall be deemed a part of this Franchise. Where appropriate: the singular shall include the plural and vice versa; "or" shall mean "and/or"; and "including" shall mean, including but not limited to." In any case where the approval or consent of one Party hereto is required, requested or otherwise to be given under this Franchise, such Party shall not unreasonably delay, condition, or withhold its approval or consent.

13.8 Severability of Provisions. If any one or more of these provisions of this Franchise shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such Provision(s) shall be deemed severable from the remaining provisions of this Franchise and shall not affect the legality, validity, or constitutionality of the remaining portions of this Franchise.

13.9 Waiver: Amendment. The waiver by either Party of any breach or violation of any provision of this Franchise shall not be deemed to be a waiver or continuing waiver of any subsequent breach or violation of the same or any other provision of this Franchise. This Franchise may not be amended except pursuant to a written instrument signed by both Parties. Any contractual amendments shall be approved by an ordinance of the City Council.

13.10 Representations and Warranties. Each of the Parties represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the Parties' respective obligations hereunder and that such obligations shall be binding upon such Party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided specifically herein.

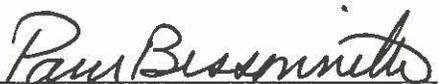
13.11 Entire Franchise. This Franchise contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, agreements, or understandings, whether oral or written, between or among the parties relating to the subject matter of this Franchise which are not fully expressed herein.

13.12 Publication Costs. Crown Castle shall reimburse the City for the cost of publishing the Franchise ordinance within 30 days of receipt of the City's invoice.

IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Franchise, the duly authorized representatives of the Parties have executed this Franchise as of the Effective Date.

CITY OF MERCER ISLAND

WA – CLEC LLC

By: 
Name: PAM BISSONNETTE
Title: INTERIM CITY MANAGER
Date: 12/28/2016

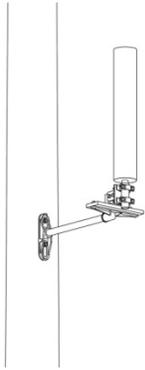
By: 
Name: ROD HANSON
Title: VP / GENERAL MANAGER
Date: 12/28/16

EXHIBIT A

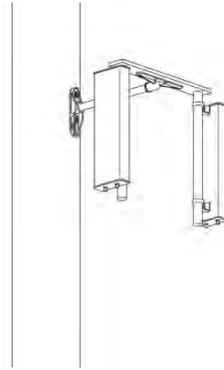
SITE NAME	ADDRESS LOCATION
MIN 01	2907 70th Avenue SE, Mercer Island, WA 98040
MIN 02	7233 SE 29th Street, Mercer Island, WA 98040
MIN 03	6175 SE 27th Street, Mercer Island, WA 98040
MIN 04	2416 70th Avenue SE, Mercer Island, WA 98040
MIN 05	3028 51st Avenue SE, Mercer Island, WA 98040
MIN 06	6805 SE 32nd Street, Mercer Island, WA 98040
MIN 07	2740 West Mercer Way, Mercer Island, WA 98040
MIN 08	3844 Greenbrier Lane, Mercer Island, WA 98040
MIN 09	3633 90th Avenue SE, Mercer Island, WA 98040
MIN 10	4027 93rd Avenue SE Mercer Island, WA 98040
MIN 11	3209 Shorewood Drive, Mercer Island, WA 98040
MIN 12	4030 96th Avenue SE, Mercer Island, WA 98040
MIN 13	2702 71st Avenue SE, Mercer Island, WA 98040
MIN 14	3450 West Mercer Way, Mercer Island, WA 98040
MIN 15	3720 Gallagher Hill Road, Mercer Island, WA 98040
MIS 01	8215 SE 78th Street, Mercer Island, WA 98040
MIS 02	8800 SE 78th Street, Mercer Island, WA 98040
MIS 03	7432 78th Avenue SE Mercer Island, WA 98040
MIS 04	7217 West Mercer Way, Mercer Island, WA 98040
MIS 05	7820 – 79th Avenue SE, Mercer Island, WA 98040
MIS 06	8225 SE 72nd Street, Mercer Island, WA 98040
MIS 07	7236 91st Avenue SE, Mercer Island, WA 98040
MIS 08	6950 93rd Avenue SE, Mercer Island, WA 98040
MIS 09	8124 SE 73rd Street, Mercer Island, WA 98040
MIS 10	7 Holly Lane, Mercer Island, WA 98040
MIS 11	4324 West Mercer Way, Mercer Island, WA 98040
MIS 12	4803 West Mercer Way, Mercer Island, WA 98040
MIS 13	4880 Forest Avenue SE, Mercer Island, WA 98040
MIS 14	5261 West Mercer Way, Mercer Island, WA 98040
MIS 15	8015 SE 58th Street Mercer Island, WA 98040
MIS 16	7775 Shore Lane, Mercer Island, WA 98040
MIS 17	6571 80th Avenue SE, Mercer Island, WA 98040
MIS 18	6315 77th Avenue SE, Mercer Island, WA 98040
MIS 19	6226 Island Crest Way, Mercer Island, WA 98040
MIS 20	4500 West Mercer Way, Mercer Island, WA 98040
MIS 21	5033 West Mercer Way, Mercer Island, WA 98040
MIS 22	6180 West Mercer Way, Mercer Island, WA 98040
MIS 23	7130 78th Avenue SE, Mercer Island, WA 98040
MIS 24	7607 79th Avenue SE, Mercer Island, WA 98040

EXHIBIT B

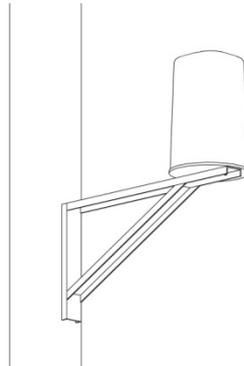
Communication Space Antenna Designs



Cylindrical-style antenna



Panel-style antenna(s)



Drum-style antenna

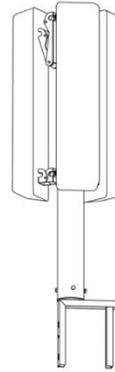
All antennas shall be flush-mounted.

Scale approximate

Pole Top Antenna Designs



Cylindrical-style antenna



Panel-style antenna(s)



Cylindrical-style antenna



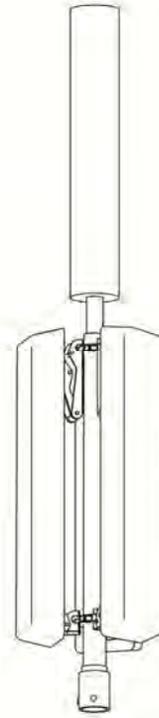
Drum-style antenna

Scale approximate

Pole Top Antenna Designs



Omni ("whip")-style antenna

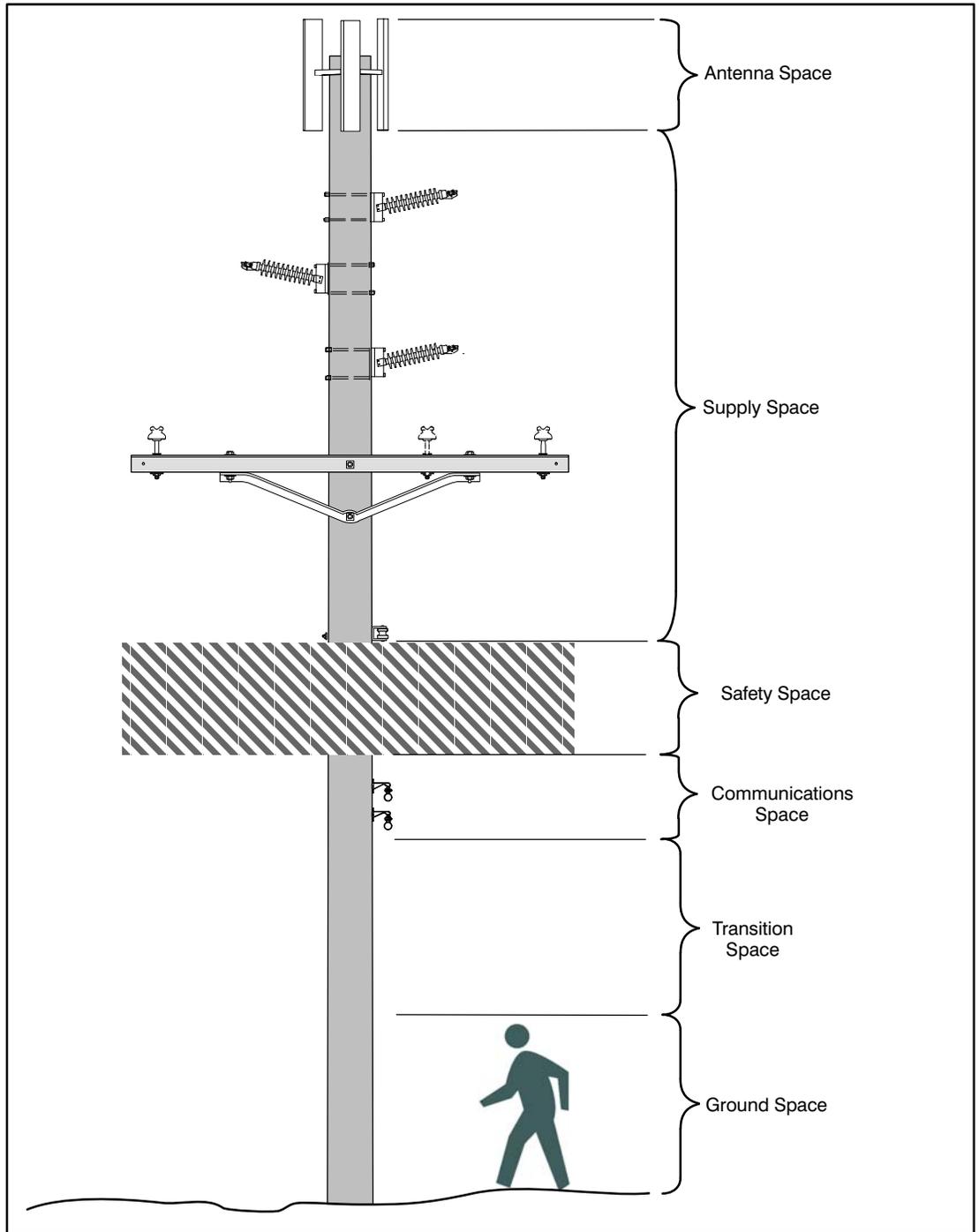


Cylindrical-style antenna atop
panel-style antenna(s):

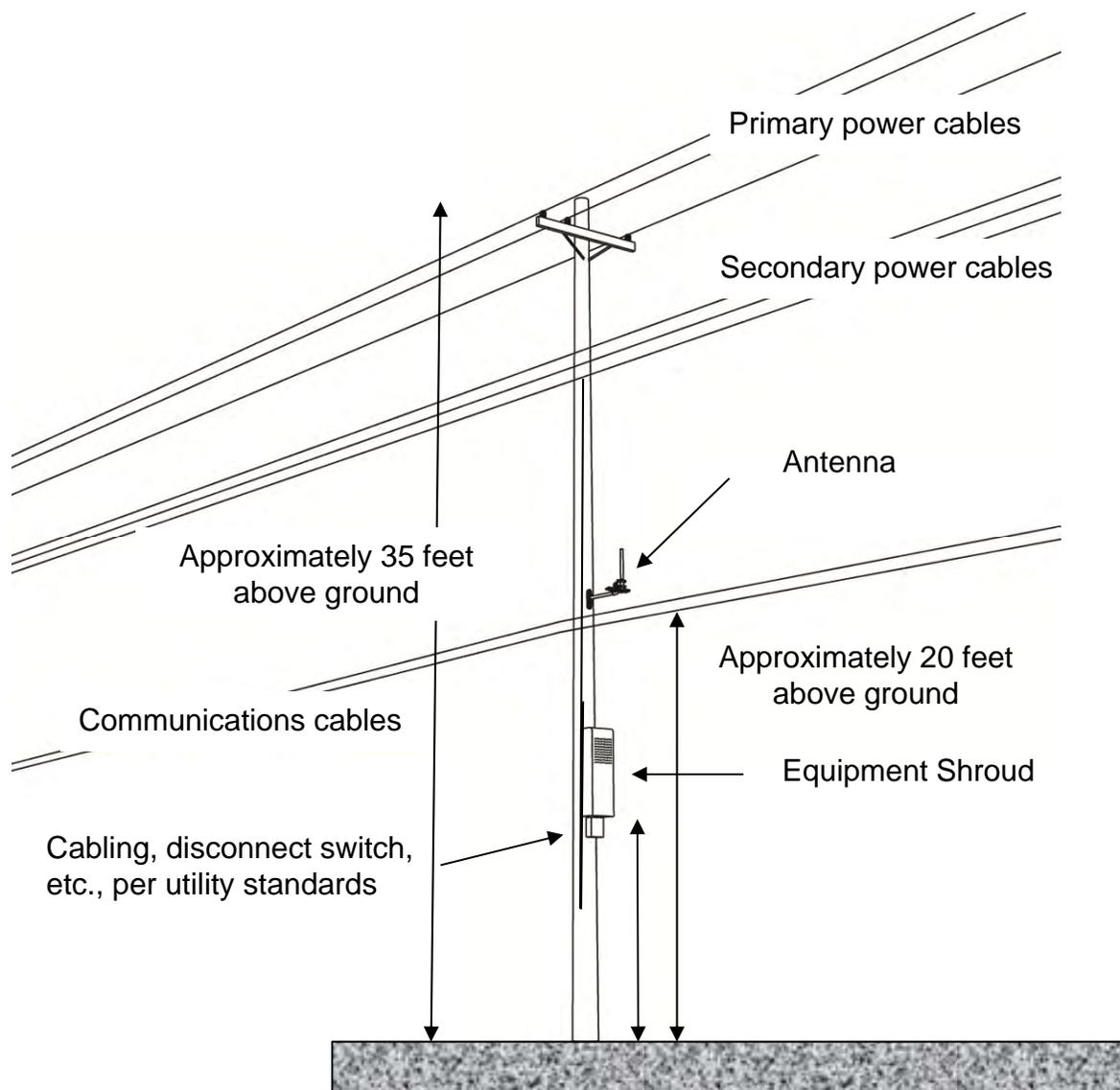
Scale approximate

EXHIBIT C

PSE Pole Diagrams

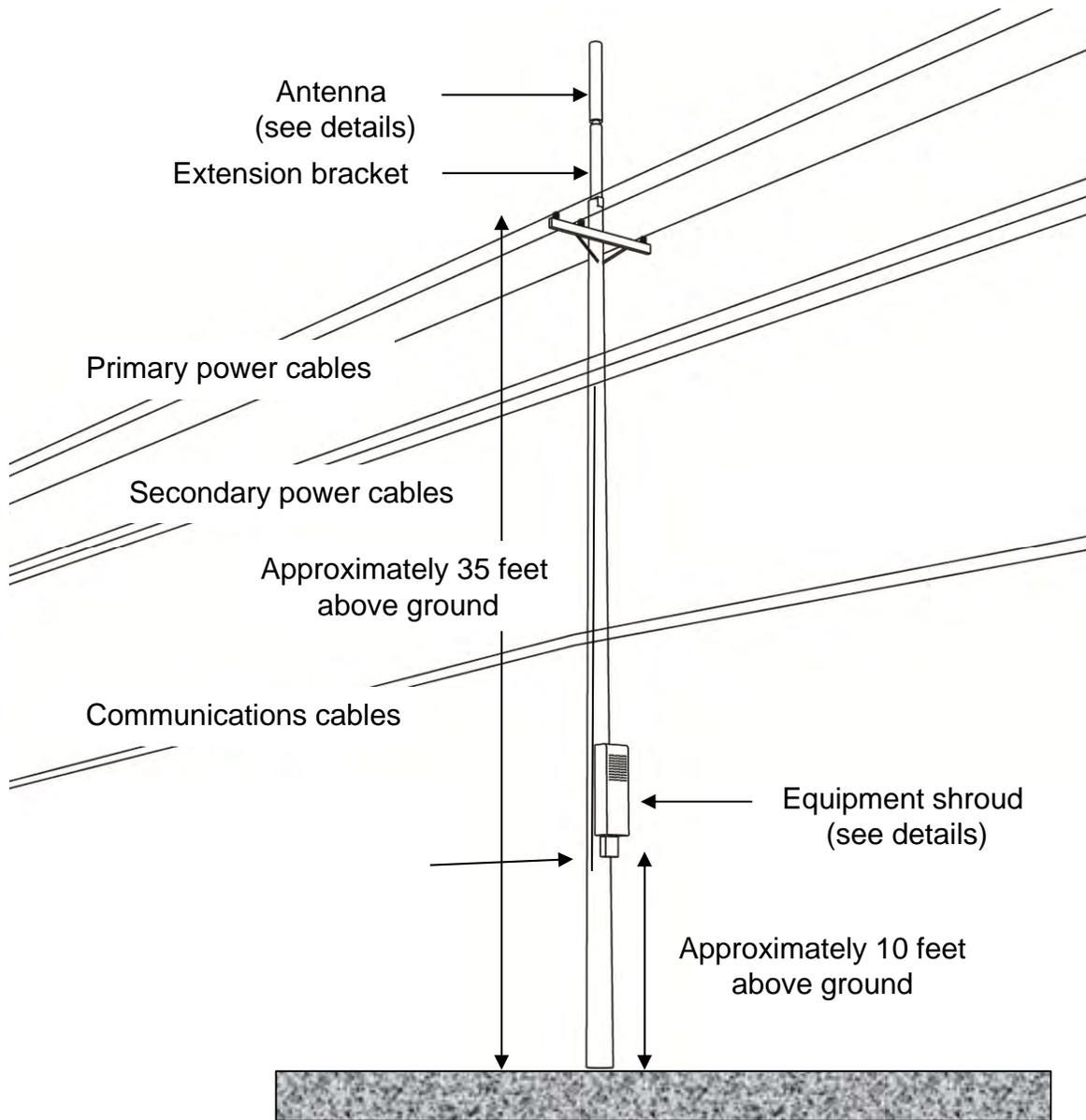


Antenna in Communication Space



Scale approximate
Construction will meet national and local utility safety codes

Antenna on Pole-top



Scale approximate
Construction will meet national and local utility safety codes