

ORDINANCE _____

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON GRANTING VERIZON WIRELESS (VAW) LLC d/b/a VERIZON WIRELESS A FRANCHISE TO OPERATE AND MAINTAIN SMALL CELL FACILITIES IN CITY RIGHTS-OF-WAY FOR THE PROVISION OF WIRELESS TELECOMMUNICATIONS SERVICES

WHEREAS, the City of Bellingham (the “City”) is authorized under state law, Chapter 35.99 Revised Code of Washington (“RCW”), to regulate and permit the operation and maintenance of facilities in City rights-of-way for the provision of wireless telecommunications services; and

WHEREAS, Chapter 13.15 of the Bellingham Municipal Code (“BMC”) requires persons who are seeking to operate and maintain wireless telecommunications facilities in City rights-of-way to obtain a franchise to do so, granted by ordinance; and

WHEREAS, Verizon Wireless (VAW) LLC d/b/a Verizon Wireless (“Verizon”) has applied for a city-wide franchise to operate and maintain small cell facilities in City rights-of-way for the provision of wireless telecommunications services to the public; and

WHEREAS, the City’s Public Works Director has reviewed Verizon’s franchise application against the requirements of BMC 13.15 and has recommended approval; and

WHEREAS, City Council has reviewed Verizon’s franchise application against the requirements of BMC 13.15, including the factors listed in BMC 13.15.050, and has determined that the application should be approved, and a franchise granted, in accordance with applicable law; and

WHEREAS, notice of this “Franchise Ordinance” has been published once per week for four consecutive weeks in the Bellingham Herald in accordance with the requirements of BMC 13.15.050.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLINGHAM DOES HEREBY ORDAIN that a franchise is hereby granted to Verizon Wireless (VAW) LLC d/b/a Verizon Wireless upon the following terms and conditions:

**CITY OF BELLINGHAM – VERIZON WIRELESS (VAW) LLC
TELECOMMUNICATIONS FRANCHISE AGREEMENT
SMALL CELL FACILITIES IN CITY RIGHTS-OF-WAY**

1. **Definitions.** The terms used in this Franchise shall have the meaning ascribed to them in BMC 13.15 and 13.16. In addition:

- 1.1 “BMC” means the Bellingham Municipal Code.
- 1.2 “City” means the City of Bellingham, Washington.

1.3 “City rights-of-way” means rights-of-way located within City limits. The term “right-of-way” is defined in BMC 13.15.

1.4 “Franchise” means this franchise ordinance and agreement.

1.5 “Franchisee” means Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, a Delaware limited liability company authorized to do business in the State of Washington under UBI #602057104.

2. **Grant of Franchise.** Pursuant to BMC 13.15 and the terms and conditions contained herein, the City hereby grants Franchisee a nonexclusive, city-wide Franchise to construct, support, install, operate, maintain, repair, upgrade, replace, or remove small cell facilities within, upon, over, under, along, and across City rights-of-way for the provision of wireless telecommunications services to the public.

3. **General Terms and Conditions.** The general terms and conditions of this Franchise are contained in BMC 13.15, incorporated herein by reference as if fully set forth herein. Any violation of BMC 13.15 shall be deemed a violation of this Franchise.

4. **Term.** The term of this Franchise is ten (10) years, commencing on the date of Franchisee’s written acceptance of this Franchise, subject to renewal as provided in BMC 13.15.

5. **Small Cell Permit Requirements.** Franchisee shall comply with all small cell permit requirements contained in BMC 13.16.

6. **Attachment to City Light Poles.** This Franchise, alone, does not grant or confer any right upon Franchisee to attach facilities to City light poles. Attachment to City light poles requires additional authorization from the City in the form of a lease or license agreement approved by the mayor in accordance with BMC 13.16.120. Such facilities must also comply with the small cell permitting requirements contained in BMC 13.16.

7. **Performance Bond.** The amount of the performance bond required under BMC 13.15.220 shall be in the sum of Fifty Thousand Dollars (\$50,000.00).

8. **Insurance.** Franchisee shall provide the City with a certificate of insurance, together with copies of all endorsements and/or blanket policy language relied upon by Franchisee to establish insurance coverage that is substantially consistent with the requirements set forth in BMC 13.15.200 prior to applying for any small cell permit or within thirty (30) days of commencement of this Franchise, whichever occurs first. Any material deviations from the insurance requirements contained in BMC 13.15.200 must be approved by the Office of the City Attorney.

9. **Title 51 Waiver.** FOR THE SOLE AND LIMITED PURPOSE OF EFFECTUATING FRANCHISEE’S DEFENSE AND INDEMNIFICATION OBLIGATIONS TO THE CITY UNDER BMC 13.15.210, FRANCHISEE HEREBY WAIVES ANY IMMUNITY IT MAY HAVE UNDER THE WASHINGTON INDUSTRIAL INSURANCE ACT, TITLE 51 RCW.

10. **License and Tax.** This Franchise does not exempt Franchisee from any applicable license, tax, fee or charge. Failure to pay timely any applicable tax, fee or charge to the City, or to obtain any applicable registrations or licenses required by the City, shall constitute a violation of this Franchise and shall be grounds for revocation.

11. **BMC References.** All references to the Bellingham Municipal Code shall be construed to mean the code as presently constituted or hereafter amended or recodified.

12. **Notice.** All notices required or permitted hereunder shall be in writing and delivered in person or by U.S. Mail or nationally recognized overnight carrier, addressed as follows:

To the City: City of Bellingham
 Attention: Public Works Director
 104 West Magnolia Street - Suite 109
 Bellingham, Washington 98225

With copy to:

Office of the City Attorney
210 Lottie Street
Bellingham, Washington 98225

To Franchisee: Verizon Wireless (VAW) LLC
 d/b/a Verizon Wireless
 180 Washington Valley Road
 Bedminster, New Jersey 07921
 Attention: Network Real Estate

With copy to:

Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless
Attn: West Area Legal Counsel
15505 San Canyon Avenue
Irvine, CA 92618

The notice addresses provided above may be updated by written notice delivered in accordance with the requirements of this section.

13. **Jurisdiction and Venue.** In the event any suit, action or litigation arises concerning this Franchise, the venue of such suit, action or litigation shall be in the Superior Court for the State of Washington in and for the County of Whatcom. Franchisee stipulates to personal jurisdiction in said court and waives any right to have such suit, action or litigation heard in federal court on the

basis of diversity jurisdiction. If such suit, action, or litigation involves a federal question, than the venue of such suit, action, or litigation shall be the United States District Court for the Western District of Washington, located in Seattle, Washington.

14. **Acceptance.** This Franchise shall be void if Franchisee fails to execute and deliver its acceptance of the same to the Office of the City Attorney within thirty (30) days of the effective date of this ordinance. By executing the "Franchise Acceptance" at the bottom of this Franchise, Franchisee accepts and agrees to be bound by all its terms and conditions.

15. **Change of Law.** If any state or federal law sets forth a term or provision that is inconsistent with or different than this Franchise or the applicable BMC, then the Parties agree to discuss and, if appropriate, promptly amend this Franchise to effect the term or provision set forth under the applicable law.

16. **Fees.** For any fees due hereunder or pursuant to applicable law, the City shall submit to Franchisee statements/billings for such expenses. Franchisee shall make payment to the City in reimbursement of such undisputed expenses within thirty (30) days of the receipt of such statements/billings. If Franchisee, in good faith, disputes any portion of the administrative expenses, Franchisee shall pay the undisputed portion, if any, and provide written notice of the dispute within thirty (30) days of the receipt of the statement/billings from the City. Unless the City agrees to a modification of the statement/billings based on Franchisee's dispute notice, Franchisee and the City shall negotiate any dispute in good faith, and if they cannot reach a resolution to such a dispute, both the City and Franchisee may invoke any other remedies available to them at law and in equity.

17. **Repair of Damages.** Franchisee shall make any repairs required under Section 13.15.120 within thirty (30) days after date of the damage, or within thirty (30) days after notice from the City of such damage, whichever is sooner. If Franchisee fails to repair the damage within the aforementioned time periods, then the City may repair the same in accordance with Section 13.15.120.

18. **Undergrounding.** Franchisee acknowledges the City's policy of undergrounding of facilities within the right of way as required under Section 13.15.140, but the parties further acknowledge that such undergrounding requirement does not extend to antennas, equipment cabinets, associated cables, and other equipment that must be above-ground to operate.

PASSED by City Council this _____ day of _____, 2019.

Council President

APPROVED by me this ____ day of _____, 2019.

Mayor

ATTEST:

Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

Published:

