

ORDINANCE NO. 19-010

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

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

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

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

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

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

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

Section I

Grant of Franchise

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

Section II

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

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

SIGNED: _____
Mayor

ATTEST: _____
Clerk

APPROVED as to form:

City Attorney

EXHIBIT "A"

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

Parties:

City of Camas, a Washington Municipal Corporation ("City") And

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

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

Section 1. Definitions

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

- 1.1 New Cingular: New Cingular Wireless PCS, LLC, and its respective successors and assigns.

- 1.2 City: The City of Camas, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.

- 1.3 Days: Calendar days.

- 1.4 Facilities: All of the plant, equipment, fixtures, appurtenances, and other facilities necessary to furnish and deliver wireless services, including but not limited to optical converters, remote radios, multiplexers, antennas, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, cut-off switches, electric meters, wires, lines, conduits, cables, communication and signal lines and equipment, fiber optic cable, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to distribution and use of wireless services and all other facilities associated with the wireless communications facilities located in the Right-of-Way, utilized by New Cingular in the operation of activities authorized by this Ordinance. The abandonment by New Cingular of any Facilities as defined herein shall not act to remove the same from this definition.

- 1.5 Franchise: This document and any amendments or modifications hereto.

- 1.6 Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's Right-of-Way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

- 1.7 Person: An entity or natural person.

- 1.8 Public Works Director or Director: The head of the Public Works department of the City, or in the absence thereof, the acting director, or the designee of either of these individuals.

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

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

Section 2. Franchise Granted.

2.1 Pursuant to RCW 35A.47.040, the City hereby grants to New Cingular, its heirs, successors, and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of ten (10) years (the "Initial Term"), beginning on the effective date of this Ordinance. Following the Initial Term, this Franchise shall automatically be renewed for three (3) additional periods of five (5) years (each a "Renewal Term"), unless: (i) New Cingular provides the City notice of its intent not to renew at least ninety (90) days before the expiration of the Initial Term or then current Renewal Term, as applicable, or (ii) with respect to the second Renewal Term or third Renewal Term, the City provides New Cingular notice of its intent not to renew at least three hundred sixty five (365) days before the expiration of the first Renewal Term or second Renewal Term, as applicable.

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

Section 3. Nonexclusive Franchise Grant.

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

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

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

Section 5. No Rights by Implication.

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

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

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

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

Section 6. Conveyance of Rights.

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

Section 7. No Waiver.

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

Section 8. Other Ordinances.

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

Section 9. Right-of-Way Vacation.

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

Section 10. Relocation of Facilities.

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

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

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

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

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

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

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

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

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

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

of this Franchise and the RCW, the RCW shall control.

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

Section 11. New Cingular's Maps and Records.

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

Section 12. Undergrounding.

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

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

Section 13. Service to Public Buildings (intentionally blank)

Section 14. Excavation and Notice of Entry.

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

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

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

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

Section 15. Stop Work.

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

15.1 Be in writing;

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

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

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

15.5 Establish conditions under which work may be resumed.

Section 16. Emergency Work, Permit Waiver.

In the event of any emergency where any Facilities located in the Right-of-Way are broken or damaged, or if New Cingular's construction area for their Facilities is in such a condition as to

place the health or safety of any person or property in imminent danger, New Cingular shall immediately take any necessary emergency measures to repair or remove its Facilities without first applying for and obtaining a permit as required by this Franchise. However, this emergency provision shall not relieve New Cingular from later obtaining any necessary permits for the emergency work. New Cingular shall apply for the required permits not later than the next business day following the emergency work.

Section 17. Recovery of Costs.

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

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

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

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

Section 19. Safety.

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

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

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

Cingular shall reimburse the City for all reasonable costs incurred by the City in correcting the violation.

Section 20. Authorized Activities.

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

Section 21. Administrative Fee and Utility Tax.

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

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

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

Section 22. [Intentionally omitted.]

Section 23. Indemnification.

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

23.2 In the event New Cingular refuses to undertake the defense of any suit or any claim, after the City's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and New Cingular's refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of New Cingular, then New Cingular shall pay all of the City's reasonable costs and reasonable expenses for defense of the action, including reasonable

attorneys' fees of recovering under this indemnification clause, as well as any judgment against the City.

Should a court of competent jurisdiction or such other tribunal as the parties agree shall decide the matter, determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of New Cingular and the City, its officers, employees and agents, New Cingular's liability hereunder shall be only to the extent of New Cingular's negligence. It is further specifically and expressly understood that the indemnification provided in Section 23 of this Franchise constitutes New Cingular's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 24. Insurance.

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

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

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

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

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

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

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

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

24.5 Other Insurance Provision. New Cingular's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City

shall be excess of the Applicant's insurance and shall not contribute with it.

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

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

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

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

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

Section 25. Abandonment of New Cingular's Facilities.

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

Section 26. Restoration After Construction.

New Cingular shall, after any abandonment approved under Section 25 of this Franchise, or any installation, construction, relocation, maintenance, or repair of Facilities within the Franchise area,

promptly complete all restoration work and promptly repair any damage caused by such work at its sole cost and expense. New Cingular agrees to complete all restoration in accordance with the approved permit issued by the City, consistent with the City's Engineering Design Standards, for the work in question.

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

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

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

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

Section 27. Bond or Letter of Credit.

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

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

Section 28. Recourse Against Bonds and Other Security.

So long as the bond is in place, it may be utilized by the City as provided herein for reimbursement of the City by reason of New Cingular's failure to pay the City for actual costs and expenses incurred by the City to make emergency corrections under Section 18 of this Franchise, to correct Franchise violations not corrected by New Cingular after notice, and to compensate the City for monetary remedies or damages reasonably assessed against New Cingular due to material default or violations of the requirements of City ordinances.

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

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

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

Section 29. Liquidated Damages.

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

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

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

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

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

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

Section 30. Remedies to Enforce Compliance.

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

Section 31. Modification.

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

Section 32. Force Majeure.

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

Section 33. City Ordinances and Regulations.

Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate lawful ordinances regulating the performance of the conditions of this Franchise, including any reasonable lawful ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control, by appropriate lawful regulations, the location, elevation, and manner of construction and maintenance of any Facilities by New Cingular. New Cingular shall promptly conform to all such regulations, unless compliance would cause New Cingular to violate other requirements of law.

Section 34. Acceptance/Liaison.

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

Section 35. Survival.

All of the provisions, conditions and requirements of Sections 10, Relocation of Facilities; 14, Excavation And Notice Of Entry; 18, Dangerous Conditions; 23, Indemnification; 25, Abandonment of New Cingular's Facilities; and 26, Restoration After Construction, of this Franchise shall be in addition to any and all other obligations and liabilities New Cingular may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to New Cingular and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the parties and all privileges, as well as all obligations and liabilities of each party shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever such party is named herein.

Section 36. Severability.

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

Section 37. WUTC Tariff Filings, Notice Thereof.

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

Section 38. Binding Acceptance.

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

Section 39. Assignment.

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

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

Section 40. Alternate Dispute Resolution.

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

Section 41. Venue.

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

Section 42. Entire Agreement.

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

Section 43. Notice.

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

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

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

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

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

With a copy to:

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

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

Section 44. Directions to City Clerk.

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

Section 45. Publication Costs.

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

Section 46. Effective Date.

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

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

New Cingular

City

New Cingular Wireless PCS, LLC
a Delaware limited liability company

City of Camas
a Washington Municipal Corporation

By: AT&T Mobility Corporation
Its: Manager

By: _____
Name: _____
Title: _____

_____ by Shannon Turk, Mayor

PASSED BY THE CITY COUNCIL ON _____, 2019.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney