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ORDINANCE NO. 3617

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, GRANTING TO CLEARWIRE US, LLC A RIGHT-OF-WAY USE PERMIT, TO INSTALL, OPERATE, AND MAINTAIN COMMUNICATIONS FACILITIES WITHIN A CERTAIN DESIGNATED PUBLIC RIGHT-OF-WAY OF THE CITY OF EDMONDS, WASHINGTON, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT THERETO, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Clearwire US, LLC has requested that the City grant it the right to install, operate, and maintain structures and facilities within the public ways of the City; and

WHEREAS, in case of a monopole or other communications facilities such request to install a monopole has been approved by the Architectural Design Board and hearing examiner when required by ordinance, and

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such a Right-of-Way Use Permit be granted to Clearwire US, LLC; and

WHEREAS, the City Council has the authority under RCW 35A.47.040 to grant Right-of-Way Use Permits and franchises for the use of its streets and other public properties; and

WHEREAS, the City is willing to grant the rights requested subject certain terms and Conditions, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Definitions. For the purposes of this Right-of-Way Use Permit, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number.

a. “Affiliate” means an entity which owns or controls, is owned or controlled by, or is under common ownership with the Permittee.

b. “City” means the City of Edmonds, Washington.

c. “Communication Service” shall mean any telecommunications services, telecommunications capacity, or dark fiber, provided by the Permittee using its Communication System or Facilities, either directly or as a carrier for its subsidiaries, Affiliates, or any other person engaged in Communication Services, including, but not limited to, the transmission of voice, data or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading and home shopping, or other subsequently developed technology which carries an electronic signal over fiber optic cable. However, Communications Services shall not include the provision of cable television, open video, or similar services, as defined in the Communications Act of 1934, as amended, for which a separate franchise would be required.

d. “Communication” or “Facilities” shall mean the Permittee’s (or other valid right of way use permit holder’s) facilities and attendant structures constructed and operated within the City’s Public Way, and shall include all cables, wires, conduits, ducts, pedestals, and any associated converter, equipment, or other facilities within the City’s Public Way, designed and constructed for the purpose of providing Communication Service. The terms shall also include such additional facilities as the parties by mutual agreement shall designate in the future and incorporate by written addendum. A general description of the Facilities currently planned by Permittee is set forth in Exhibit A, attached hereto and incorporated by this reference.

e. “FCC” means the Federal Communications Commission, or any successor governmental entity hereto.

f. “Permittee” means Clearwire US, LLC, a Nevada Limited Liability Company, or the lawful successor, transferee, or assignee thereof.

g. “Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

h. “Public Way” shall mean the surface of, and any space above or below, any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, lane, drive circle, or other public right-of-way, including, but not limited to,

public utility easements, utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the Service Area which shall entitle the City and the Permittee the use thereof for the purpose of installing, operating, repairing, and maintaining the Facility. Public Way shall also mean any easement now or hereafter held by the City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Permittee to the use thereof for the purposes of installing or transmitting the Permittee's Communication Services over poles, wires, cable, conductors, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Communication System.

Section 2. Authority Granted. The City hereby grants to the Permittee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege, and authority to construct, reconstruct, upgrade, operate, maintain, replace, and use all necessary equipment and Facilities thereto for the Permittee's Communication System. However, the Permittee is only authorized to place its communication Facilities in, under, on, across, over, through, along, or below the Public Way of the City described in Exhibit A hereto.

Section 3. Construction Right-of-Way Use Permits Required.

A. Prior to site-specific location and installation of any portion of its communication Facilities within a public way, the Right-of-Way Use Permittee shall apply for and obtain a Construction Right-of-Way Use Permit pursuant to ECDC Chapter 18.60.

B. Unless otherwise provided in said Right-of-Way Use Permit, the Permittee shall give the City at least 48 hours notice of the Permittee's intent to commence work in the Public Ways. The Permittee shall file plans or maps with the City showing the proposed location of its communication Facilities and pay all duly established Right-of-Way Use Permit and inspection fees associated with the processing of the Right-of-Way Use Permit. In no case shall any work commence within any public way without said Construction Right-of-Way Use Permit, except as otherwise provided in this Right-of-Way Use Permit.

Section 4. Grant Limited to Occupation. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Public Ways of the City to the Permittee, nor shall anything contained herein constitute a warranty of title.

Section 5. Term of Right-of-Way Use Permit. The first term of this Right-of-Way Use Permit shall be for a period of ten (10) years from the date of acceptance as set forth in Section 32, unless sooner terminated. This Right-of-Way Use Permit shall automatically renew for one (1) additional ten (10) year term. Provided, however, that either party may notify the other of its desire to renegotiate any of the terms set forth herein or of its desire to add to or delete any such terms not later than 180 days prior to expiration of the initial term hereof or any subsequent

renewal terms. If either party makes such a request, this Right-of-Way Use Permit shall not renew unless and until the City and Permittee reach agreement on said modification, addition, and/or deletion, and said agreement is approved by ordinance of the City Council. In the event that agreement cannot be reached, this Right-of-Way Use Permit shall terminate at the end of the then current term. Nothing in this Section prevents the parties from reaching agreement on renewal earlier than the time periods indicated. In addition, the Permittee may, upon ninety days notice terminate the Right of Way Use Permit with no further obligation, except as specifically set forth herein, beyond the lease payment for the then current calendar year.

Section 6. Non-Exclusive Grant. This Right-of-Way Use Permit shall not in any manner prevent the City from entering into other similar agreements or granting other or further Right-of-Way Use Permits or franchise in, under, on, across, over, through, along or below any of said Public Ways of the City. However, the City shall not permit any such future Permittee or Franchisee to physically interfere with the Permittee's communication Facilities. In the event that such physical interference or disruption occurs, the Public Works Director may assist the Permittee and such subsequent Permittee or Franchisee in resolving the dispute. Further, this Right-of-Way Use Permit shall in no way prevent or prohibit the City from using any of its Public Ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Public Ways, and in compliance with Section 7, below.

Section 7. Relocation of Communication Facility.

A. The Permittee agrees and covenants, at its sole cost and expense, to protect, support, temporarily disconnect, relocate, or remove from any public way any portion of its communication Facilities when so required by the Public Works Director by reason of traffic conditions, public safety, dedications of new Public Ways and the establishment and improvement thereof, widening and improvement of existing Public Ways, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity; provided that the Permittee shall in all cases have the privilege to temporarily relocate, in the authorized portion of the same or similar public way upon approval by the Public Works Director, any section of cable or any other facility required to be temporarily disconnected or removed.

Upon the reasonable request of the Public Works Director and in order to facilitate the design of City street and right-of-way improvements, the Permittee agrees to, at its sole cost and expense, locate, and if reasonably determined necessary by the City, to excavate and expose portions of its communication Facilities for inspection so that the location of same may be taken into account in the improvement design, PROVIDED that, Permittee shall not be required to excavate and expose it's Facilities unless the Permittee's as-built plans and maps of it's Facilities submitted pursuant to Section 9 of this Right-of-Way Use Permit are reasonably determined by

the Public Works Director to be inadequate for purposes of this paragraph. The decision to relocate said Facilities in order to accommodate the City's improvements shall be made by the Public Works Director upon review of the location and construction of the Permittee's Facilities.

If the Public Works Director determines that the project necessitates the relocation of the Permittee's then existing Facilities, the City shall:

1. Within a reasonable time, which shall be no less than 30 days, prior to the commencement of such improvement project, provide the Permittee with written notice requiring such relocation. In the event that such relocation requires land use approvals by the City, such notice period shall be extended by an additional 90 days. Provided, however, that in the event an emergency posing a threat to public safety, health or welfare, or in the event of an emergency beyond the control of the City and which will result in severe financial consequences to the City, the City shall give the Permittee written notice as soon as practicable; and
2. Provide the Permittee with copies of information for such improvement project and a proposed location for the Permittee's Facilities so that the Permittee may relocate its Facilities in other Public Ways in order to accommodate such improvement project.
3. The Permittee shall complete relocation of its Facilities at no charge or expense to the City so as to accommodate the improvement project at least 10 days prior to commencement of the project. In the event of an emergency as described herein, the Permittee shall relocate its Facilities within the time period specified by the Public Works Director.

The Permittee 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 the Permittee in writing if one or more of the alternatives is suitable to accommodate the work which would otherwise necessitate relocation of the Facilities. If so requested by the City, the Permittee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Permittee full and fair consideration, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, the Permittee shall relocate its Facilities as otherwise provided in this Section.

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

B. Except as provided in Section 16(E), the Permittee will indemnify, hold harmless, and pay the costs of defending the City against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Permittee to relocate its Facilities in a timely manner; provided, that the Permittee shall not be responsible for damages due to delays caused by the City or circumstances beyond the control of the Permittee.

C. The parties understand that the relocation of Facilities placed in the right-of-way is partially governed by Chapter 35.99 RCW, and to the extent that the provisions of this section are not in compliance with the terms of Chapter 35.99 RCW (or successor statute), the provisions of the statute shall control and the terms of this section shall be amended to be in conformance thereto.

Section 8. The Permittee's Maps and Records. After construction is complete, the Permittee shall provide the City with accurate copies of all as-built plans and maps in a form and content prescribed by the Public Works Director. These plans shall be provided at no cost to the City, and shall include hard copies and digital copies in a format specified by the Public Works Director.

Section 9. Work in Public Ways. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said Public Ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property. The Permittee 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 the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

During the progress of the work, the Permittee shall not unnecessarily obstruct the passage of proper use of the Public Ways, and all work by the Permittee in the area covered by this Permit and as described in this Section shall be performed in accordance with City of Edmonds Public Works Construction Standards and warranted for a period of 1 year.

If either the City or the Permittee shall at any time after installation of the Facilities plan to make excavations in areas covered by this Permit and as described in this Section, the party planning such excavation shall afford the other, upon receipt of written request to do so, an opportunity to share such an excavation. PROVIDED THAT:

- A. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs;
- B. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and

- C. Either party may deny such request for safety reasons or if their respective uses of the trench are incompatible.
- D. Such joint use shall not necessarily interfere with operation of the communication facility.

The joint use provisions of this Section shall apply only to joint use by the City and the Permittee. Nothing in this Section is intended to require the Permittee to afford other similar users the opportunity to share the Permittee's excavations.

Section 10. Restoration after Construction. The Permittee shall, after installation, construction, relocation, maintenance, removal, or repair of its communication Facilities within the Public Ways, restore the surface of said Public Ways and any other City-owned property which may be disturbed by the work, to at least the same condition the public way or City-owned property was in immediately prior to any such installation, construction, relocation, maintenance, or repair, reasonable wear and tear excepted. The Development Services Department shall have final approval of the condition of such Public Ways and City-owned property after restoration, all in accordance with the Edmonds City Code and Public Works Construction standards. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications. The Permittee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Public Ways or other affected area at its sole cost and expense according to the time and terms specified in the Construction Right-of-Way Use Permit issued by the City all in accordance with the applicable provisions of the Edmonds City Code, as the same now exists or as it may hereafter be amended or superseded. All work and restoration by the Permittee pursuant to this Section shall be performed in accord with City of Edmonds Public Works Construction standards and warranted for a period of 1 years.

Section 11. Emergency Work – Right-of-Way Use Permit Waiver. In the event of any emergency in which any of the Permittee's communication Facilities located in, above, or under any public way breaks, are damaged, ceases to provide service, or if the Permittee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Permittee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a Right-of-Way Use Permit as required by this Right-of-Way Use Permit. However, this shall not relieve the Right-of-Way Use Permittee from the requirement of notifying the City of the emergency work and obtaining any Right-of-Way Use Permits necessary for this purpose after the emergency work. The Right-of-Way Use Permittee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required Right-of-Way Use Permits not later than the second succeeding day during which the Edmonds City Hall is open for business.

Section 12. Dangerous Conditions, Authority for City to Abate. Whenever construction, installation, or excavation of the communication Facilities authorized by this Right-of-Way Use Permit has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the Public Works Director may reasonably require the Permittee, at the Permittee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, utilities, and Public Ways. Such action may include compliance within a prescribed time.

In the event that the Permittee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, Public Ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Permittee shall be liable to the City for the reasonable costs thereof.

Section 13. Recovery of Costs. The Permittee shall be subject to all Right-of-Way Use Permit fees associated with activities undertaken through the authority granted in this Right-of-Way Use Permit or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this Right-of-Way Use Permit or any ordinances relating to the subject for which a Right-of-Way Use Permit fee is not established, the Permittee shall reimburse the City directly for any and all reasonable costs, after receipt of an itemized bill.

In addition to the above, the Permittee shall promptly reimburse the City for any and all reasonable costs the City incurs in response to any emergency involving the Permittee's communication Facilities, after receipt of an itemized bill.

The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and an overhead charge of six percent (6%) of salary. All billings will be itemized as to specifically identify the costs and expenses for each project for which the City claims reimbursement. The billing may be on an annual basis, but the City shall provide the Right-of-Way Use Permit with the City's itemization of costs at the conclusion of each project for information purposes.

Section 14. Compensation for Use of the Right-of-Way.

A. In consideration for the use of the Right-of-Way, Permittee shall commit to providing an annual site-specific charge under RCW 35.21.860(1)(e) for each Facility approved in the future by a Right-of-Way Use Permit. The amount of the annual payment for any partial year (prorated) and for future calendar years and thereafter shall be as follows:

1. Separate support structure (such as monopole or lattice tower) erected solely for wireless antennas, equipment cabinets are in the Right-of-Way, annual payment is Five Thousand Dollars (\$5,000).

2. Antennas placed on an existing structure or replacement of an existing structure, equipment cabinets are in the Right-of-Way, annual compensation is Three Thousand Dollars (\$3,000).

3. Antennas placed on an existing structure owned by the City or replacement of an existing structure, equipment cabinets are not within the Right-of-Way, annual compensation is Two Thousand Dollars (\$2,000).

B. For the purposes of this section, "existing support structures" mean existing utility poles, light poles or other approved structures that exist in the Right-of-Way that can be used to support wireless antennas.

C. For the purpose of this section, "replacement poles" mean replacing an existing support structure with a like structure that is either taller and/or stronger than the existing structure for purposes of placement of wireless antennas.

D. The compensation provided for in Subsection A shall be adjusted annually each year of the first ten year term by an increase of five (5) percent. The parties shall meet in the tenth year to readjust the provisions of this section and Section 17 Insurance to establish levels of compensation, annual adjustments thereto and insurance consistent with that charged by comparable jurisdictions.

E. In the event that the Facilities of the Permittee are out of service due to a relocation under the provisions of Section 7 for the convenience of the City, a credit equal to the prorated value of the time the Facility or Facilities are out of service shall be given on the next years compensation.

F. In addition, the Permittee shall pay an amount to the City equal to the Washington States Leasehold tax applicable to a site specific charge levied under subsections A (1), (2), or (3) above. The Leasehold tax shall not apply to the administrative fee charge under Section 15 below.

Section 15. Grant Fee. As additional consideration for the right and privileges granted hereunder, the Permittee agrees to pay, at the time of acceptance of this Right-of-Way Use Permit, a one time grant fee of One Thousand Dollars (\$1,000) to defray the City's legal and administrative costs and expenses associated with negotiating and approving this Right-of-Way Use Permit, provided that such expenses shall not be included in the reimbursement provisions set forth in Section 14 of this Right-of-Way Use Permit.

Section 16. Indemnification and Waiver.

A. Permittee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person arising from injury, sickness, or death of any person or damage to property:

1. For which the negligent acts or omissions of Permittee, its agents, servants, officers or employees in performing the activities authorized by this Right-of-Way Use Permit are the proximate cause;
2. By virtue of the Permittee's exercise of the rights granted herein;
3. By virtue of the City's permitting Permittee's use of the City's Public Ways or other public property;
4. Based on the City's inspection or lack of inspection of work performed by Permittee, its agents and servants, officers or employees in connection with work authorized on the Public Ways or property over which the City has control pursuant to this Right-of-Way Use Permit or pursuant to any other Right-of-Way Use Permit or approval issued in connection with this Right-of-Way Use Permit;
5. Arising as a result of the negligent acts or omissions of Permittee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work upon the Public Ways, in any public way, or other public place in performance of work or services permitted under this Right-of-Way Use Permit.

B. The provisions of Subsection A of this Section shall apply to claims by Permittee's own employees and the employees of the Permittee's agents, representatives, contractors, and subcontractors to which Permittee might otherwise be immune under Title 51 RCW. This waiver of immunity under Title 51 RCW has been mutually negotiated by the parties hereto, and Permittee acknowledges that the City would not enter into this Right-of-Way Use Permit without Permittee's waiver thereof

C. Inspection or acceptance by the City of any work performed by the Permittee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Permittee has been given prompt written notice by the City of any such claim, said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised with Permittee's consent prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim, provided that Permittee shall not be liable for such settlement or other compromise unless it has consented thereto.

D. In the event that Permittee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this Section, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to the matter), to have been a wrongful refusal on the part of the Permittee, then Permittee shall pay all

of the City's costs for defense of the action, including all reasonable expert witness fees, reasonable attorney's fees, the reasonable costs of the City, and reasonable fees of recovering under this Subsection.

E. The obligations of Permittee under the indemnification provisions of this Section shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the City, its officers, agents, employees or contractors except to the extent that such claims, actions, damages, costs, expenses, and attorneys fees were caused by the negligence or any willful or malicious action on the part of the City, its officers, agents, employees or contractors. In the event that a court of competent jurisdiction determines that this Right-of-Way Use Permit is subject to the provisions RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

F. Notwithstanding any other provisions of this Section, Permittee assumes the risk of damage to its communication Facilities located in the Public Ways and upon City-owned property from such activities conducted by the City, its officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from the negligence or any willful or malicious action on the part of the City, its officers, agents, employees or contractors. Permittee releases and waives any and all such claims against the City, its officers, agents, employees or contractors. Permittee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Permittee's Facilities as the result of any interruption of service due to damage or destruction of Permittee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the negligence or any willful or malicious actions on the part of the City, its officers, agents, employees or contractors.

Section 17. Insurance. The Permittee shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the Permittee, its agents, representatives or employees. The Permittee shall provide to the City an insurance certificate naming the City as an additional insured for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this Right-of-Way Use Permit. Such insurance certificate shall evidence:

A. Comprehensive general liability insurance, written on an occurrence basis, including contractual liability coverage, with limits not less than:

- (1) \$3,000,000.00 for bodily injury or death to each person; and
- (2) \$3,000,000.00 for property damage resulting from any one accident.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000.00 for each person and \$3,000,000.00 for each accident.

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00.

The liability insurance policies required by this Section shall be maintained by the Permittee throughout the term of this Right-of-Way Use Permit, and such other period of time during which the Permittee is operating without a Right-of-Way Use Permit hereunder, or is engaged in the removal of its Communication System. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Permittee. The insurance certificate required by this Section shall contain a clause stating that the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Permittee's insurance shall be primary insurance with respect to the City. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Permittee's insurance and shall not contribute with it.

In addition to the coverage requirements set forth in this Section, the insurance certificate required by this Section shall contain language which provides that the policy may not be canceled, reduced in coverage, nor the intention not to renew be stated until at least 30 days after receipt by the City of written notice of the same via U.S. mail. Within 15 days after receipt by the City of said notice, and in no event later than 5 days prior to said cancellation or non-renewal, the shall obtain and furnish to the City replacement insurance certificate(s) meeting the requirements of this Section

Section 18. Abandonment and Removal of the Permittee's Communication Facilities. Upon the expiration, termination, or revocation of the rights granted under this Right-of-Way Use Permit, the Permittee shall remove all of its communications Facilities from the Public Ways of the City within 90 days of receiving notice from the Community Services Public Works Director. Provided, however, that the City may permit the Permittee's improvements to be abandoned and replaced in such a manner as the parties shall agree, subsequent always to the City's standard construction requirements for Right-of-Way use. Upon permanent abandonment, and Permittee's agreement to transfer ownership of the communication Facilities to the City, the Permittee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place which are not removed within ninety (90) days of receipt of said notice shall automatically become the property of the City. Provided, however, that nothing contained within this Section shall prevent the City from compelling the Permittee to remove any such Facilities through judicial action when the City has not permitted the Permittee to abandon said Facilities in place.

Section 19. Construction Bond. Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this Right-of-Way Use Permit, the Permittee shall furnish a street repair or sidewalk bond written by a corporate

surety acceptable to the City equal to at least 125% of the estimated cost of restoring the Public Ways of the City to the pre-construction condition required by Section 11 of this Right-of-Way Use Permit. Said bond shall be required to remain full force until 60 days after completion of the construction of Permittee's communication Facilities and other improvements from the Public Ways of the City, and said bond, or separate bond acceptable to the City, shall warrant all such restoration work for a period of two years. In the event that a bond issued to meet the requirements of this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, Permittee shall, prior to expiration of said bond, be responsible for obtaining a replacement bond which complies with the terms of this Section.

Section 20. Modification. The City and the Permittee hereby reserve the right to alter, amend or modify the terms and conditions of this Right-of-Way Use Permit upon the written agreement of both parties to such alteration, amendment or modification. Said modifications shall be approved by the City by ordinance and accepted by the Permittee consistent with Section 32 hereof.

Section 21. Forfeiture and Revocation. If the Permittee willfully violates or fails to comply with any of the material provisions of this Right-of-Way Use Permit, or through willful misconduct or gross negligence fails to heed or comply with any notice given the Right-of-Way Use Permittee by the City under the provisions of this Right-of-Way Use Permit, then the Permittee shall, at the election of the City Council, forfeit all rights conferred hereunder and this Right-of-Way Use Permit may be revoked, terminated or annulled by the City Council after a hearing held upon reasonable written notice to Permittee. The City Council may decide, after consideration of the reasons for the Permittee's failure to comply with the Right-of-Way Use Permit, to allow the Permittee additional time to cure before such termination or revocation. The City may elect, in lieu of the above, and without prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Permittee to comply with the provisions of this Right-of-Way Use Permit and to recover reasonable and documented damages and costs incurred by the City by reason of the Permittee's failure to comply.

Section 22. 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 ordinances regulating the performance of the conditions of this Right-of-Way Use Permit, including any valid 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 regulations the locations, elevation, manner or construction and maintenance of any Facilities by the Permittee, and the Permittee shall promptly conform with all such regulations, unless compliance would cause the Permittee to violate other requirements of the law.

Section 23. Survival. All of the provisions, conditions, and requirements of this Right-of-Way Use Permit shall be in addition to any and all other obligations and liabilities the Permittee may have to the City at common law, by statute, or by contract. The provisions, conditions, and requirements of Sections 7, Relocation of Communication System; 9, Work in

Public Ways; 10, Restoration after Construction; 12, Dangerous Conditions, Authority for City to Abate; 16, Indemnification and Waiver; 17, Insurance; 18, Abandonment and Removal of the Permittee's Communication Facilities, and 19, Construction Bond, shall survive the expiration or termination of this Right-of-Way Use Permit, and any renewals or extensions thereof and remain effective until such time as the Permittee removes its communication Facilities from the Public Ways, transfers ownership of said Facilities to a third party, or abandons said System in place, all as provided herein. All of the provisions, conditions, regulations and requirements contained in this Right-of-Way Use Permit shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the Permittee and all privileges, as well as all obligations and liabilities of the Permittee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever the Permittee is named herein.

Section 24. Severability. In any section, sentence, clause, or phrase of this Right-of-Way Use Permit 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 Right-of-Way Use Permit.

Section 25. Assignment. This agreement may not be assigned or transferred without the written approval of the City, which approval shall not be unreasonably withheld or delayed, except that the Permittee may freely assign this Right-of-Way Use Permit in whole or part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. The Permittee shall provide prompt, written notice to the City of any such assignment.

Section 26. Notice. Any notice or information required or permitted to be given to the parties under this Right-of-Way Use Permit may be sent to the following addresses unless otherwise specified:

City:
City of Edmonds
Public Works Director
121 5th Avenue N.
Edmonds, WA 98020
425-771-0235
Fax: 425-744-6057

Permittee:
Clearwire US LLC
Attn: Site Property Manager
5808 Lake Washington Blvd. NE
Suite 800
Kirkland, WA 98033
425-216-7600
Fax: 425-216-7900

Notice shall be deemed given upon receipt in the case of personal delivery, three days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

Section 27. Entire Right-of-Way Use Permit. This Right-of-Way Use Permit 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 approval and acceptance of this Right-of-Way Use Permit.

Section 28. Attorney's Fees. If any suit or other action is instituted in connection with any controversy arising under this Right-of-Way Use Permit, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorney's fees, including fees upon appeal of any judgement or ruling.

Section 29. Non-waiver. Failure of the City to declare any such breach or default immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

Section 30. Governing Law/Venue. This Right-of-Way Use Permit shall be governed by and construed in accordance with the laws of the State of Washington. The venue and jurisdiction over any dispute related to this Right-of-Way Use Permit shall be with the Snohomish County Superior Court.

Section 31. Acceptance. Within 60 days after the passage and approval of this ordinance, this Right-of-Way Use Permit may be accepted by Permittee by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Permittee to so accept this Right-of-Way Use Permit within said period of time shall be deemed a rejection thereof, and the rights and privileges herein granted shall, after the expiration of the 60 day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 32. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect 5 days after the passage and publication of an approved summary thereof consisting of the title.

CITY OF EDMONDS

MAYOR GARY HAAKENSON

ATTEST/AUTHENTICATED:

CITY CLERK SANDRA S. CHASE

APPROVED AS TO FROM:
OFFICE OF THE CITY ATTORNEY:

By: _____
W. SCOTT SNYDER

FILED WITH THE CITY CLERK:	12/15/2006
PASSED BY THE CITY COUNCIL:	12/19/2006
SIGNED BY THE MAYOR:	12/21/2006
PUBLISHED:	12/24/2006
EFFECTIVE DATE:	12/29/2006
ORDINANCE NO.:	3617

SUMMARY ORDINANCE NO. 3617

of the City of Edmonds, Washington

On the 19th day of December, 2006, the City Council of the City of Edmonds, passed Ordinance No. 3617. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, GRANTING TO CLEARWIRE, LLC A RIGHT-OF-WAY USE PERMIT, TO INSTALL, OPERATE, AND MAINTAIN A MONOPOLE AND OTHER FACILITIES WITHIN A CERTAIN DESIGNATED PUBLIC RIGHT-OF-WAY OF THE CITY OF EDMONDS, WASHINGTON, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT THERETO, AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

DATED this 20th day of December, 2006.

SANDRA S. CHASE, CITY CLERK