ORDINANCE O-4940

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING SQF, LLC, D/B/A VERTA, A NON-EXCLUSIVE FRANCHISE FOR 10 YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS SYSTEM IN THE RIGHTS-OF-WAY OF THE CITY OF KIRKLAND.

WHEREAS, SQF, LLC, d/b/a Verta ("Franchisee") has requested that the City of Kirkland grant it a nonexclusive franchise to install, operate, and maintain a small wireless telecommunications system within the City's public rights-of-way; and

WHEREAS, the City Council finds it desirable for the welfare of the City of Kirkland and for the people who live, work, and visit Kirkland that such a non-exclusive franchise be granted to Franchisee; and

WHEREAS, the City Council has the authority under state law pursuant to RCW 35A.47.040), and local law to grant franchises for the use of the City's rights-of-way; and

WHEREAS, pursuant to RCW 35A.47.040, the City Council must approve franchises by ordinance, with a first reading at an open public meeting and a second reading at a later open public meeting; and

WHEREAS, the City Council held the first reading of this franchise at its regularly scheduled open public meeting on June 16, 2026; and held the second reading at its regularly scheduled meeting on July 7, 2026; and

WHEREAS, the City Council is willing to grant the rights requested by Franchisee subject to certain terms and conditions.

NOW, THEREFORE, the City Council of the City of Kirkland does ordain as follows:

<u>Section 1.</u> Definitions.

For purposes of this Telecommunications Franchise (the "Franchise"), the terms defined in Section 26.08.020 of the Kirkland Municipal Code ("KMC") shall apply. In addition, the terms below have the following meanings:

A. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with Franchisee.

B. "City" means the City of Kirkland, a municipal corporation of the State of Washington.

C. "Small Wireless Facility" means a small wireless facility as defined in KZC 117.15.20 and 47 CFR § 1.6002 and shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceed the noise limits allowed in the Codes or associated Franchise are excluded from "Small Wireless Facilities." Services do not include personal wireless services and associated facilities that fall outside of the definition of Small Wireless Facilities (i.e., macro facilities).

D. "Facility" or "facilities" means the plant, equipment and property including, but not limited to, poles, antennas, cables, wires, conduits, ducts, pedestals, electronics, and other appurtenances used or to be used to transmit, receive, distribute, provide or offer wireless telecommunications service.

E. "Telecommunications Franchise" or "Franchise" shall mean a Franchise as defined in KMC 26.08.020(8), and shall also include the initial authorization or renewal thereof, granted by the City, through this Ordinance or a subsequently adopted Ordinance, which authorizes the use of rights-of-way in the Franchise Area for construction and operation of Franchisee's Facilities for the purpose of offering telecommunications service.

F. "Franchise Area" means the geographic area as set forth in Exhibit A attached hereto and incorporated herein by reference.

G. "Person" shall be defined as set forth in KMC 26.08.020(13) and shall also explicitly include a joint stock company or trust.

H. "Telecommunications Service" or "Service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this subsection, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols, but does not include "cable service" as that term is defined in Chapter 7.61 KMC.

<u>Section 2.</u> Franchise Area and Authority Granted.

A. Facilities within Franchise Area. The City does hereby grant to Franchisee the right, privilege, and authority to use Rights-of-Way in the Franchise Area to construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, relocate, upgrade, remove, enlarge, operate and use Facilities in, upon, over, under, along and across Rights-of-Way in the Franchise Area for purposes of Telecommunications Services, to the extent not inconsistent with Section 4 herein.

B. This Franchise permits Franchisee the right to install and operate in the City Rights-of-Way telecommunications Facilities for the purpose of providing Telecommunications Services, whether provided by a third-party provider, Franchisee, or a corporate affiliate of Franchisee. Any third-party provider that provides telecommunications services and which uses Franchisee's telecommunications system need not have a separate Franchise to use the Rights-of-Way unless that provider owns, installs, operates, or maintains facilities in the Rights-of-Way, or otherwise has independent access to or control of facilities in the Rights-of-Way. The purchase of service, capacity, or bandwidth from Franchisee alone does not require a separate Franchise. This Franchise does not permit the Franchisee to offer cable internet services or Cable Service as that term is defined in 47 U.S.C. § 522(6) by wireline transmission.

C. Permission Required to Enter Onto Other City Property. No right to install any facility, infrastructure, wires, lines, cables, or other equipment on any City property other than a Right-of-Way, or upon private property without the owner's consent, or upon any City, public, or privately-owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, or to subordinate the primary use of the Rights-of-Way as public thoroughfares. If Franchisee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Franchisee desires to use City-owned property, including poles and structures within the Rights-of-Way, it shall enter into a separate lease or license agreement with the City.

D. Franchisee's Customers. Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise, provided:

(a) Franchisee at all times retains exclusive control over its Telecommunications Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the Telecommunications Facilities for any purpose not authorized by this Franchise, nor to sell or offer for sale any service to the citizens of the City without all required business licenses, Franchise or other form of state-wide approval.

E. Nonexclusive Franchise. 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, along, over, through, under, below, or across any said Rights-of-Way. This Franchise shall in no way prevent or prohibit the City from using any of said roads, streets, or other public properties 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 same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 3. Construction and Maintenance.

Franchisee's Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from abutting properties and in accordance with the laws of the State of Washington. Whenever it is necessary for Franchisee, in the exercise of its rights under this Franchise, to make any excavation in the Rights-of-Way, Franchisee shall obtain prior approval from the City of Kirkland Public Works Department, pay the applicable permit fees, and obtain all necessary permits for the excavation work. Franchisee shall meet the City's specifications per the Kirkland Municipal Code ("KMC") and the Public Works Pre-Approved Plans and Policies.

Section 4. Location and Relocation of Facilities.

A. New Installation. Franchisee shall place any new Facilities underground where existing telecommunications and cable facilities are located underground. Provided, however, this requirement shall not apply to those specific portions of the Facilities that are required to remain above-ground in order to be functional. Any new Facilities to be located above-ground shall be placed on existing utility poles. No new utility poles, ground-mounted equipment or overhead utility lines shall be installed in connection with placement of new above-ground facilities except as otherwise approved by the City under this Franchise or under separate approval.

In order to minimize negative visual impact to the surrounding area, the Public Works Director may deny a request to install above-ground small cell wireless facilities (antennas and associated facilities) if more than one hundred (100) cubic feet of above ground wireless facilities exist within a one hundred fifty foot (150') radius of the proposed facility location.

B. Location. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Pre-Approved Plans and Policies, and subject to the City's applicable Code requirements. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its services beyond those described in Section 2.A.

C. Concealment. At the City's request, all Facilities shall be concealed or enclosed as much as technologically feasible in an equipment box, cabinet or other unit. All external cables and wires shall be sheathed or enclosed in conduit so that wires are not visible or visually minimized to the extent feasible, in a design substantially similar to that pictured in Exhibit B, or as allowed by law and approved by the City. Franchisee shall construct Franchisee's conduits and standoffs (collectively, the "conduits") that are attached to the utility poles in accordance with Kirkland Municipal Code (KMC) requirements and, whenever technologically feasible, shall install Franchisee's conduits so as to minimize the visible impact of such conduits.

D. Graffiti and Vandalization. Franchisee shall keep and maintain all small cell equipment installed in the public Rights-of-Way in commercially reasonable condition and repair throughout the term of this Franchise. Any equipment that is vandalized, damaged or marked with graffiti shall be repaired and/or cleaned within fourteen (14) days of receipt of written notice.

E. Relocation - Generally. The City may require Franchisee, and Franchisee covenants and agrees, to relocate Facilities within the Rights-of-Way when reasonably necessary for construction, alteration, repair or improvement of the Rights-of-Way for the purpose of public health, welfare and safety including, but not limited to, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any Public Works Improvement Project, at no cost to the City, except as may be required by KMC 26.36.040. "Public Works Improvement Project" means any construction, installation, relocation, undergrounding, expansion, maintenance, repair or removal of roads, streets, sidewalks, parks, curbs, gutters, storm drainage facilities, sewer lines, water utility lines, poles, structures or other capital improvement project within the Franchise Area that is undertaken by or on behalf of the City and is funded by the City (either directly with its own funds or with other public monies obtained by the City). For the avoidance of doubt, the term "Public Works Improvement Project" shall include any such capital improvement project undertaken by the City which requires the relocation of Franchisee's Facilities within the Franchise Area, even if the capital improvement project entails, in part, related work funded and/or performed by or for a third party governmental entity under a valid interlocal agreement between the City and such entity.

F. Locate for Design. Upon the City's request, or a third party performing work in the Rights-of-Way, and in order to facilitate the design of street and Rights-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined by the City, to excavate and expose its Facilities for inspection so that the Facilities' locations may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated to accommodate the City's Public Improvement Projects shall be made by the City upon review and location and construction of the Franchisee's Facilities.

G. Relocation – Third Party Structures. If the request for relocation from the City originates due to a Public Works Improvement Project in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City and at no cost to the City. Franchisee acknowledges and agrees that, to the extent Franchisee's Small Wireless Facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests for relocation which the City makes solely for aesthetic purposes and where such request arises out of a Public Works Improvement Project.

H. Relocation – Franchisee Owned Structures. The cost of relocation of any Franchisee owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3); provided, however, that Franchisee may opt to pay for the cost of relocating its Small Wireless Facilities in order to provide consideration for the City's approval to site a Small Wireless Facility on Franchisee owned structures or poles in a portion of the Rights-of-Way designated or planned for a Public Works Improvement Project. For this Section, designation of the Rights-of-Way for a Public Works Improvement Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of chapter 36.70A RCW. The Comprehensive Plan includes, but is not limited to, the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the Small Wireless Facility at a particular site because of the cost impact of such relocation and the conflict with the City's Comprehensive Plan.

I. Notice. The City's decision to require the relocation of Franchisee's Facilities shall be made in a reasonable, uniform and non-discriminatory manner. Notice of such relocation shall be provided by the City to Franchisee consistent with state law, Chapter 35.99 RCW.

J. Indemnification. Franchisee shall indemnify, hold harmless and pay the costs of defending the City against any and all claims, suits, actions, costs, expenses, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to relocate its Facilities in a timely manner. Franchisee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change or relocation.

K. Private Project. In the event the City orders Franchisee to relocate its Facilities for a project which is primarily for private benefit, Franchisee may seek reimbursement from the private party or parties for the cost of relocation in the same proportion as their contribution to the total cost of the project, pursuant to RCW 35.99.060(4). Franchisee agrees to relocate its Facilities by the City-ordered deadline and cannot require the private party to pay for relocation in advance. This provision allows Franchisee to seek reimbursement from a private party only after Franchisee has moved its Facilities.

L. City's Costs. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City, then the City may perform such work or cause it to be done, and the City's full costs and expenses shall be paid by Franchisee.

M. Emergency. In the event of an unforeseen emergency that creates a threat to public safety, health or welfare, the City may require Franchisee to relocate its Facilities at its own expense, any other portion of this Section notwithstanding.

N. Survival. The provisions of this Section shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 5. Indemnification.

A. Franchisee agrees to indemnify, defend, and hold harmless the City as set forth in KMC 26.40.030. In addition, Franchisee shall indemnify, defend and hold harmless the City, its agents, officers, employees, volunteers and assigns from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and reasonable attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the acts, failures and/or omissions of Franchisee or its agents, servants, employees, contractors, subcontractors or assigns arising out of this Franchise. Further, Franchisee shall indemnify, defend and hold harmless the City, its officers, employees, agents, volunteers and representatives from any and all claims, costs, judgments, awards or liability to any person arising from radio frequency emissions or radiation emitted from Franchisee's or third-party Facilities located in the Rights-of-Way, regardless of whether Franchisee's equipment complies with applicable federal statutes and/or FCC regulations related thereto. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation. Provided, however, such indemnification shall not extend to injury or damage caused by the sole negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

B. Notwithstanding any other provisions of this Franchise, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any grossly negligent, willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, elected or appointed officials, or contractors. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee'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 gross negligence or any willful misconduct on the part of the City, its officers, agents, employees, volunteers, elected or appointed officials, or contractors.

C. The provisions of this Section 5 shall survive the expiration, revocation, or termination of this Franchise.

Section 6. Default.

A. If Franchisee shall fail to comply with any of the provisions of this Franchise, the City may, in addition to the remedies provided in Chapter 26.44 KMC, serve upon Franchisee a written order to comply within thirty (30) days from the date such order is received by Franchisee. If Franchisee is not in compliance with this Franchise after expiration of the thirty (30) day period, the City may act to remedy the violation and may charge the reasonable costs and expenses of such action to Franchisee. The City may act without the thirty (30) day notice in case of an emergency. If any failure to comply with this Franchise by

Franchisee cannot be corrected with due diligence within said thirty (30) day period, then the time within which Franchisee may so comply may be extended for such time as may be reasonably necessary and so long as Franchisee works promptly and diligently to effect such compliance. If Franchisee is not in compliance with this Franchise and is not proceeding with due diligence in accordance with this section to correct such failure to comply, then the City may, in addition, by ordinance and following written notice to Franchisee, declare an immediate forfeiture of this Franchise.

B. In addition to other remedies provided in Chapter 26.44 KMC, this Franchise, or otherwise available at law, if Franchisee is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending Franchisee Rights-of-Way use permits until compliance is achieved.

Section 7. Nonexclusive Franchise.

This Franchise is not and shall not be deemed to be an exclusive franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area, provided such other franchises do not unreasonably interfere with Franchisee's use and placement of its Facilities in any Rights-of-Way and/or Franchise Area. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof. Nothing within this Section limits Franchisee's obligations to indemnify, defend and hold harmless the City as provided in Section 5 herein.

Section 8. Franchise Term.

A. This Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of the Ordinance, provided that the term may be extended for two (2) additional five (5) year terms upon the written agreement of Franchisee and the City not more than one hundred eighty (180) days and not less than ninety (90) days from the expiration of the current Franchise; and provided further, however, Franchisee shall have no rights under this Franchise nor shall Franchisee be bound by the terms and conditions of this Franchise, unless Franchisee shall, within thirty (30) days after the effective date of the Ordinance, file with the City its written acceptance of this Franchise, in a form acceptable to the City Attorney. When an extension is proposed by the Franchisee, the Franchisee shall provide proof to the City that all existing Facilities are in compliance with design standards set forth herein.

B. If the City and Franchisee fail to formally renew this Franchise prior to the expiration of its term or any extension thereof, this Franchise shall automatically continue in full force and effect until renewed or until either party gives written notice at least one hundred eighty (180) days in advance of intent not to renew this Franchise.

Section 9. Compliance with Codes and Regulations.

A. The rights, privileges and authority herein granted are subject to and governed by this Ordinance and all other applicable ordinances and codes of the City of Kirkland (collectively, the "Codes") as they now exist or may hereafter be amended, including but not limited to, the provisions of Titles 26, 19, and 5 of Kirkland Municipal Code and Title 117 of Kirkland Zoning Code. Nothing in this Ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Any location, relocation, erection or excavation by Franchisee shall be performed by Franchisee in accordance with applicable federal, state and City rules and regulations, including the City's Public Works Pre-Approved Plans and Policies, and any required franchises, licenses or fees, and applicable safety standards then in effect (collectively, "Regulations"). Notwithstanding the foregoing, Codes and Regulations shall not include any amended law, rule or regulation or newly created law, rule or regulation that violates Franchisee's rights to continue or modify existing non-conforming uses, or any other changes to laws, rules or regulations, which do not apply to previously constructed real estate improvements or wireless communication facilities.

B. In the event that any territory served by Franchisee is annexed to the City after the effective date of this Franchise, such territory shall be governed by the terms and conditions contained herein upon the effective date of such annexation.

C. Franchisee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010 or service provider as defined in RCW 35.21.860. As a result, the City will not impose a Franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a Franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

D. Franchisee acknowledges that certain of its operations within the City may constitute a telecommunication business subject to the utility tax imposed pursuant to Chapter 5.08 KMC. Franchisee agrees that if certain of its business activities are subject to taxation as a telecommunication business, then Franchisee shall pay to the City the rate applicable to such taxable services under Chapter 5.08 KMC, and consistent with state and federal law. The parties agree, however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Chapter 5.08 KMC as may be permitted by law.

Section 10. Undergrounding.

Franchisee acknowledges the City's policy of undergrounding of facilities within the Franchise Area. Franchisee will cooperate with the City in the undergrounding of Franchisee's new and existing Facilities within the Franchise Area. If, during the term of this Franchise, the City shall direct Franchisee to underground its Facilities within any Franchise Area, such undergrounding shall be at no cost to the City, except as may be provided in Chapter 35.99 RCW. Franchisee shall comply with all federal, state, and City regulations on undergrounding. If the City undertakes any street improvement which would otherwise require relocation of Franchisee's above-ground facilities, the City may, by written notice to Franchisee, direct that Franchisee convert any such Facilities to underground Facilities. Notwithstanding anything to the contrary contained herein, the undergrounding requirement shall not apply to that portion of the Facilities that are required to remain above ground in order to be functional, but the Franchisee will be responsible for providing such facilities needed to maintain the above ground function.

Section 11. City Approvals and Permits.

A. City Permits and/or Approvals Required. The granting of this Franchise is not a substitute for any other City required permits and/or approvals to construct Franchisee's Facilities in the Rights-of-Way ("City Approvals"). These City Approvals do not grant general authorization to enter and utilize the Rights-of-Way, but rather grant Franchisee permission to build its specific Small Wireless Facilities. Therefore, City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the Codes, state laws, and federal laws governing wireless communication facilities. This Section does not affect the thirty (30) day issuance requirement described in RCW 35.99.030 required for use permits such as Right-of-Way use permits and traffic control permits.

B. Preference for Existing Infrastructure; Site Specific Agreements. Franchisee shall utilize existing infrastructure in the City whenever possible and consistent with the design, concealment, and siting requirements of the City Codes, unless otherwise agreed to with the City. In the event that existing infrastructure is not available or feasible for a Facility, then Franchisee may request the placement of new or replacement structures in the Rights-of-Way consistent with the requirements of City Codes. Franchisee acknowledges and agrees that if Franchisee requests to place new or replacement structures, as described in RCW 35.21.860, in the Rights-of-Way or place Facilities on City-owned structures, which are not otherwise covered under a master lease agreement with the City, then Franchisee may be required to enter into a site-specific agreement consistent with RCW 35.21.860 in order to construct such Facilities in the Right of Way. Such agreements may require a site-specific charge by the City. The approval of a site-specific agreement is at the discretion of each of the parties thereto, subject to applicable state and federal laws.

C. Concealment. Franchisee shall construct its Facilities consistent with the concealment or stealth requirements as described in the Codes or in the applicable permit(s) in order to minimize the visual impact of such Facilities.

Section 12. Record of Installations and Service.

A. With respect to excavations by Franchisee and the City within the Franchise Area, Franchisee and the City shall each comply with its respective obligations pursuant to Chapter 19.122 RCW and any other applicable state law.

B. Upon written request of the City, Franchisee shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area. The City agrees to keep confidential any such plans to the extent permitted by law.

C. Following any construction, Franchisee shall provide the City with as-built drawings and maps of the precise location of any Facilities placed by Franchisee in any Right of Way. These plans and maps shall be provided at no cost to the City and shall include hard copies and/or digital copies in a format specified by the City. Further, such maps and as-builts shall be made available by Franchisee to the City within 10 (ten) working days of the City's written request. Franchisee hereby warrants the accuracy of all maps and as-builts provided to the City.

D. Information Available for Inspection. All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this paragraph shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this paragraph be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this paragraph shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

E. Confidential and/or Proprietary Information. Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.

F. Public Records Act Compliance. Nothing herein prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

G. Annual Audit. On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Franchisee's records reasonably related to the administration or enforcement of this Franchise, in accordance with GAAP. If the audit shows that tax or fee payments have been underpaid by three percent (3%) or more, Franchisee shall pay the total cost of the audit.

<u>Section 13.</u> Shared Use of Excavations and Trenches.

A. If either the City or Franchisee shall at any time after installation of the Facilities plan to make excavations in the Franchise Area 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: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. In addition, pursuant to RCW 35.99.070, the City may request that Franchisee install additional conduit, ducts and related access structures for the City pursuant to contract, under which Franchisee shall recover its incremental costs of providing such facilities to the City.

B. The City reserves the right to require Franchisee to joint trench with other Franchisees if both entities are anticipating trenching within the same general area and provided that the terms of this Section are met.

Section 14. Insurance.

A. Franchisee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work under this Franchise by Franchisee, its agents, representatives or employees in the amounts and types set forth below. Any policy of insurance shall be written on an occurrence basis.

(1) Commercial general liability insurance shall be written on ISO occurrence form or its equivalent and shall cover liability arising from bodily injury (including death) and property damage, including premises operation, products and ongoing and completed operations and explosion, collapse and underground coverage extensions. Commercial General Liability insurance shall be written with limits of $5,000,000 per occurrence and $10,000,000 general aggregate and a $2,000,000 products completed operations aggregate limit. The City shall be included as an additional insured as its interest may appear under this Franchise using ISO Additional Insured-Completed Operations endorsement or a substitute endorsement or endorsements providing equivalent liability coverage;

(2) Commercial Automobile liability insurance covering all owned, non-owned and hired vehicles. Coverage shall be at least as broad as ISO form CA 00 01 or a substitute form providing equivalent liability coverage. Commercial Auto Liability shall be written with a combined single limit of $1,000,000 per accident for bodily injury and property damage; and

(3) Worker's compensation within statutory limits and employer's liability insurance with limits of $1,000,000 for each accident/disease/policy limit.

B. The insurance policies required by this Section shall be maintained at all times by Franchisee.

C. Upon receipt of notice from its insurer(s), Franchisee shall provide the City with at least thirty (30) days prior written notice of cancellation of any policy required herein.

D. Franchisee's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of Franchisee's insurance and shall not contribute with it.

E. Franchisee shall furnish the City with certificates of the foregoing insurance coverage and a copy of the additional insured endorsement in a form acceptable to the City before issuance of the Franchise.

F. Franchisee shall have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City.

G. Franchisee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance or otherwise limit City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

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

I. Failure on the part of the Franchisee to maintain the insurance as required shall constitute a material breach of the Franchise, upon which the City may, after giving five business days' notice to the Franchisee to correct the breach, immediately terminate the Franchise.

Section 15. Security.

A. At the request of the City of Kirkland, and consistent with KMC 26.40.040 and the applicable right-of-way permit, Franchisee shall furnish assurance device(s) in a form and amount as required by the Public Works Director to cover the performance and maintenance of the required work, improvements, and restoration proposed by the Franchisee. This may include, but is not limited to, surety bonds, letters of credit, or other acceptable financial guarantees to ensure the completion, performance, and restoration of work within the public Right-of-Way.

B. Franchisee shall provide the City with a security fund or bond in the amount of Fifty Thousand Dollars ($50,000.00), running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to the City. In the event Franchisee fails to substantially comply with one or more provisions of this Franchise following written notice and a reasonable opportunity to cure, the City may recover jointly and severally from the Franchisee and the security fund or bond any actual damages suffered by the City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of Facilities. Franchisee specifically agrees that its failure to comply with the requirements of this Section 15 constitutes a material breach of this Franchise. The amount of the security fund or bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which it is otherwise entitled at law or in equity.

Section 16. Assignment.

A. All of the provisions, conditions, and requirements herein contained shall be binding upon Franchisee, and no right, privilege, license or authorization granted to Franchisee hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay. Notwithstanding the foregoing, Franchisee, without the consent of, but upon notice to the City, may assign this Franchise in whole or in part to: (a) an Affiliate (as defined in this Franchise); or (b) the surviving entity in the event of a merger or acquisition of substantially all of Franchisee's assets.

B. Franchisee may lease the Facilities or any portion thereof to another Person or provide capacity or bandwidth in its Facilities to another Person, provided that: Franchisee at all times retains exclusive control over such Facilities and remains responsible for locating, servicing, repairing, relocating or removing its Facilities pursuant to the terms and conditions of this Franchise.

Section 17. Abandonment and Removal of Facilities.

Franchisee's Facilities may be deemed abandoned pursuant to KMC 26.20.110. In the event of abandonment, the parties shall refer to their options in KMC 26.20.110.

Section 18. One Call Locator Service.

Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and complying with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request by the City or a third party, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 19. Miscellaneous.

A. If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections of paragraphs.

B. Franchisee shall pay for the City's reasonable administrative costs in drafting and processing this Ordinance and all work related thereto, provided that such costs shall not exceed Fifteen Thousand Dollars ($15,000). Franchisee shall further be subject to all permit fees associated with activities, and the provisions of this Franchise shall control over the provisions of any such permit, approval, license, agreement, or other document.

C. Failure of either party to declare any breach or default under this Franchise or any delay in taking action shall not waive such breach or default, but that party shall have the right to declare any such breach or default at any time. Failure of either party to declare one breach or default does not act as a waiver of that party's right to declare another breach or default.

Section 20. Notice.

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

City:
City of Kirkland
Public Works Director
123 Fifth Ave.
Kirkland, WA 98033

Franchisee:
SQF LLC d/b/a/ Verta
16 Middle Street, 2nd Floor
Portland, ME 04101

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 21. Effective Date.

This Ordinance, being in compliance with RCW 35A.47.040, shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017 Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 7th day of July, 2026.

Signed in authentication thereof this 7th day of July, 2026.

Kelli Curtis, Mayor

Attest:

~~Anastasiya Warhol, City Clerk~~
Emilee Ferguson, Deputy City Clerk

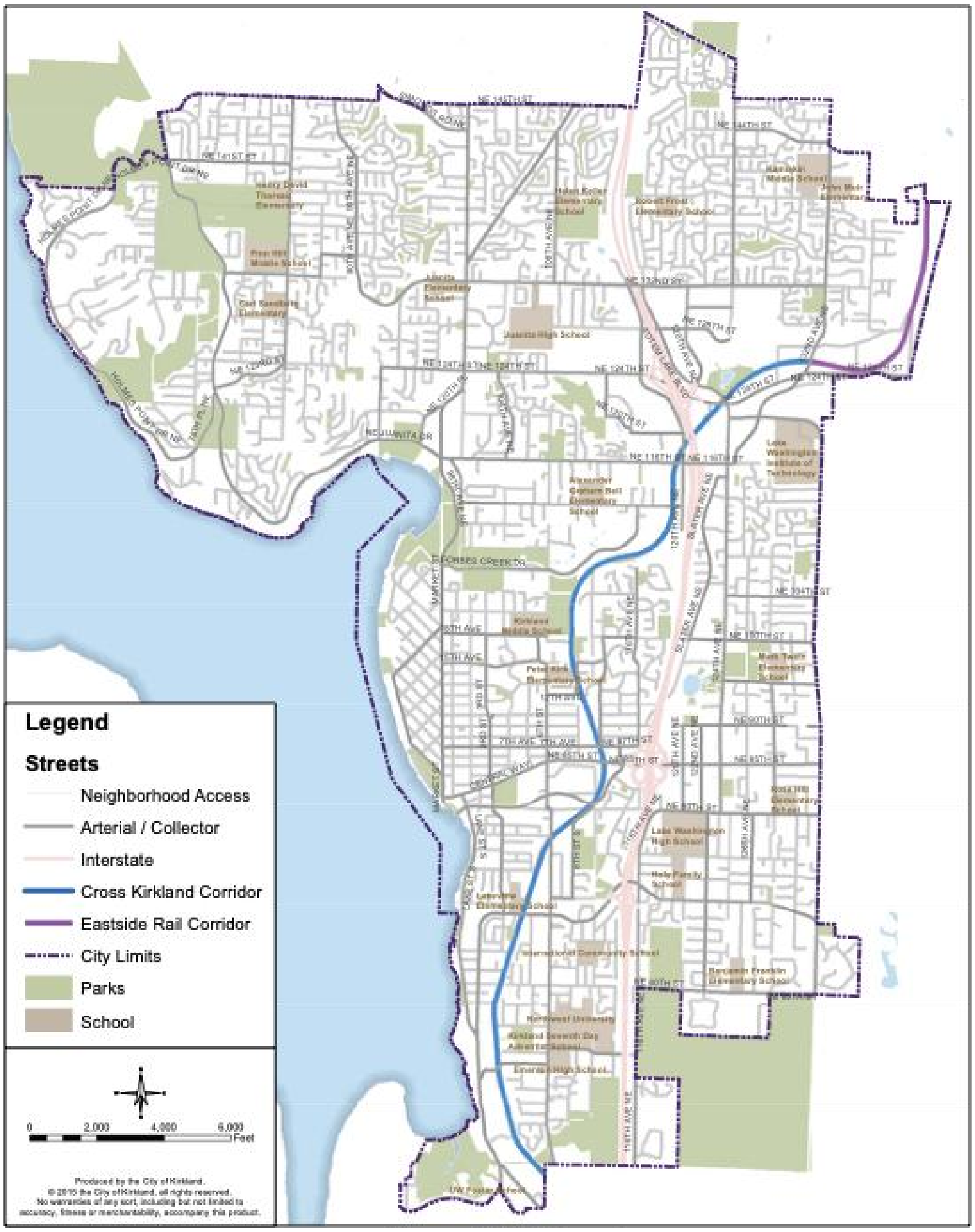
Approved as to Form:

Darcey Eilers, City Attorney

Publication Date: July 13, 2026

EXHIBIT A

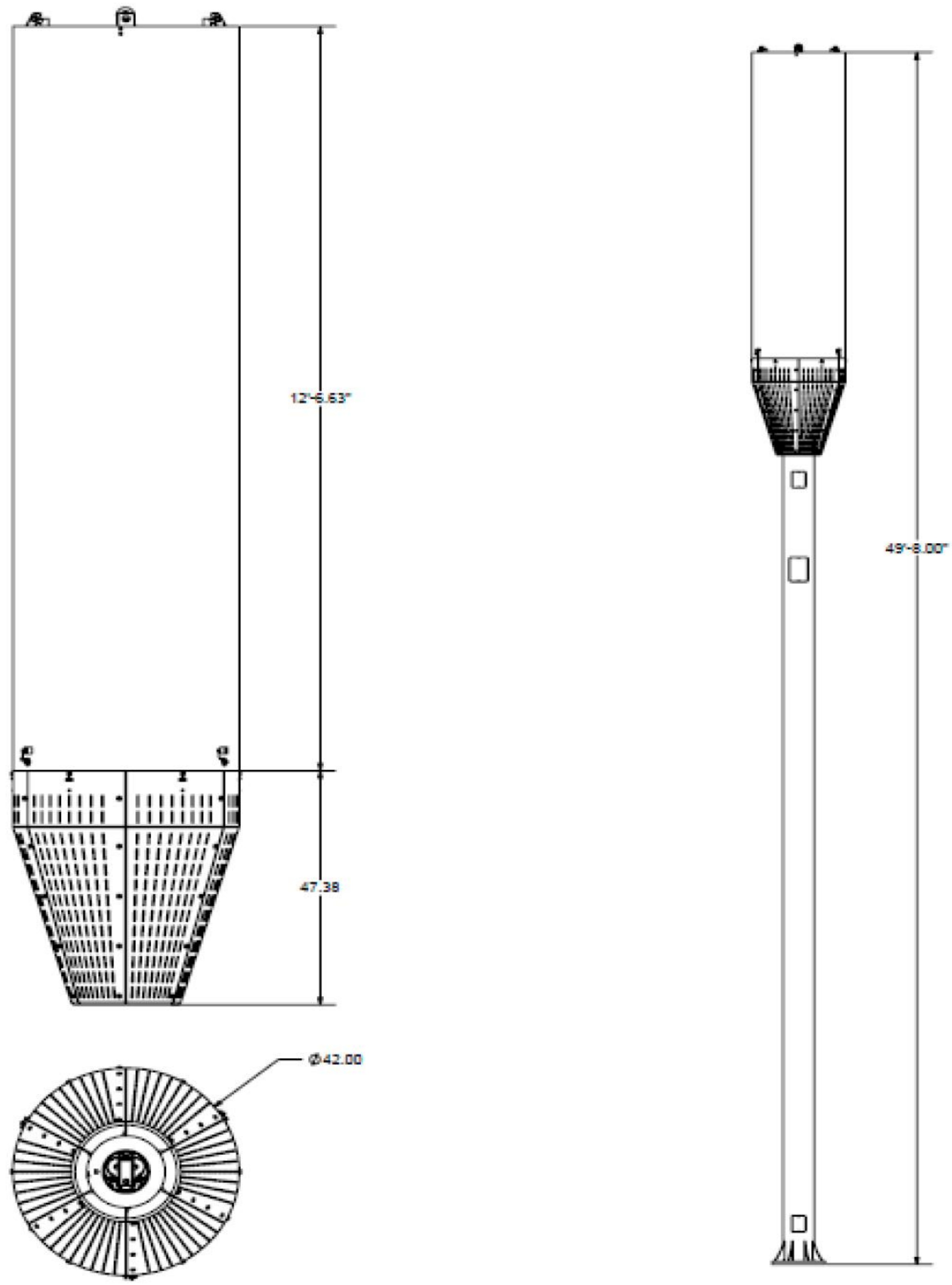
Franchise Area Map



City of Kirkland

EXHIBIT B

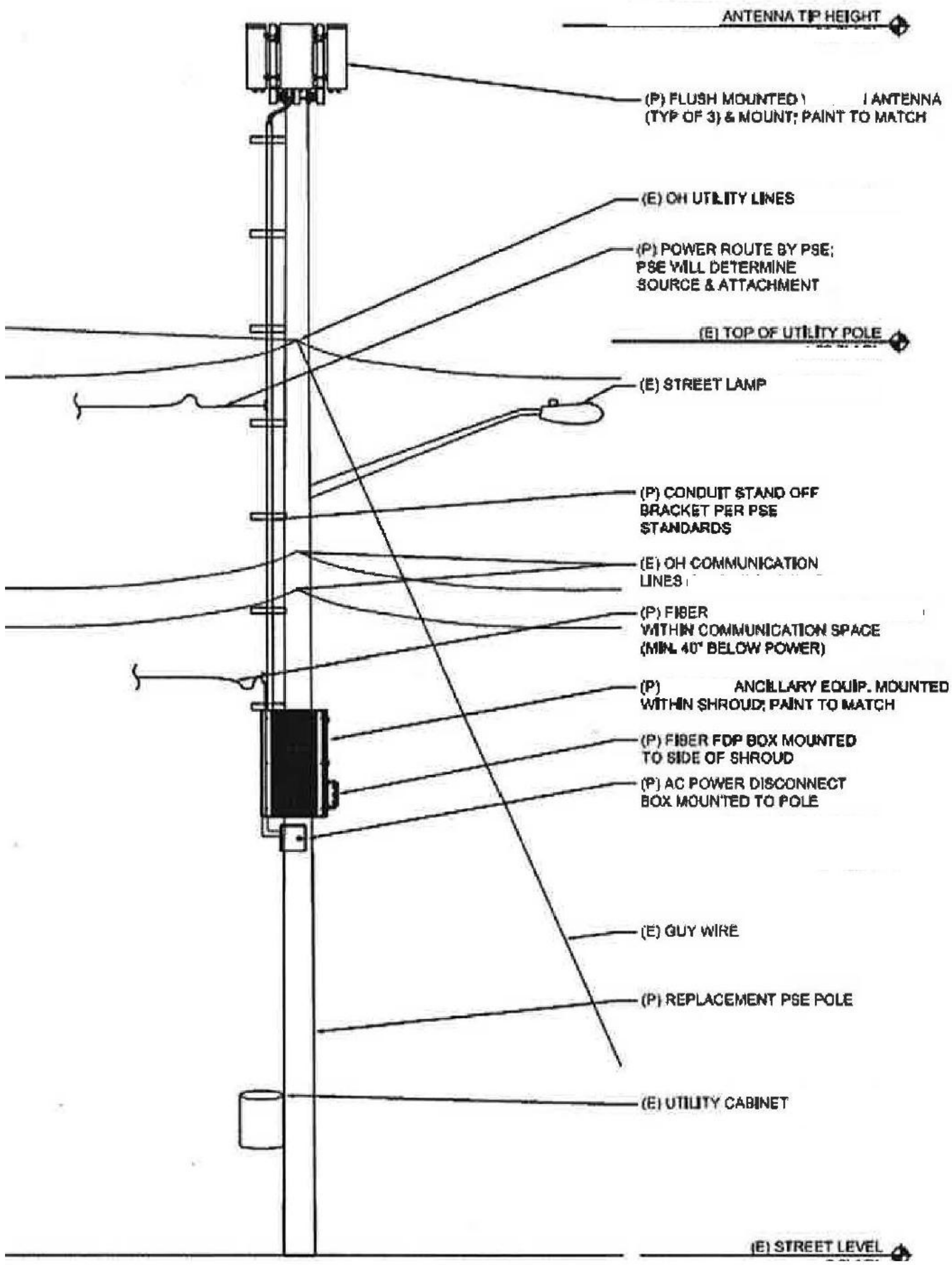
Example Concealment and Equipment Installations



Concealed New Wireless Only Pole

EXHIBIT B

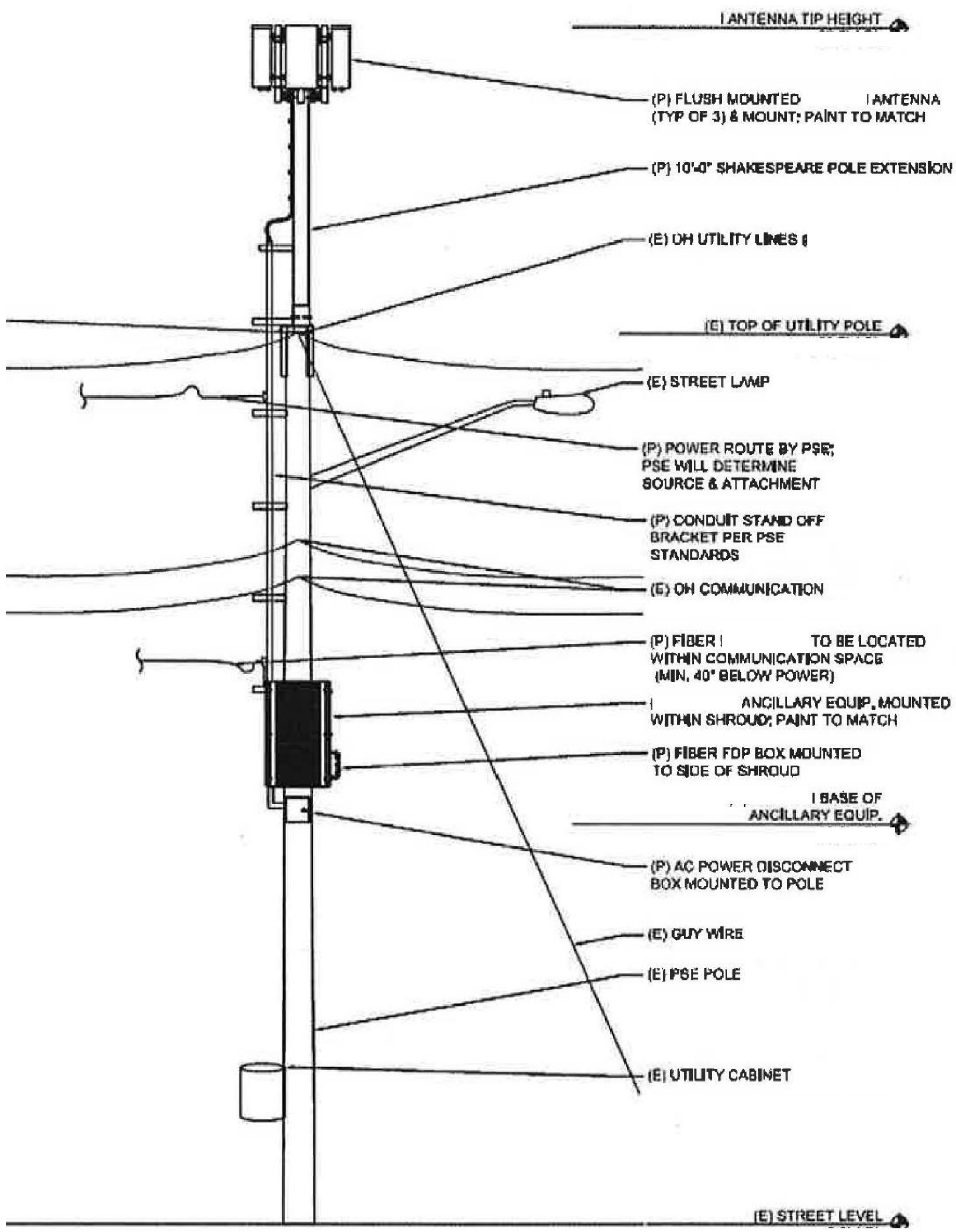
Example Concealment and Equipment Installations



Existing or Replacement Distribution Utility Pole

EXHIBIT B

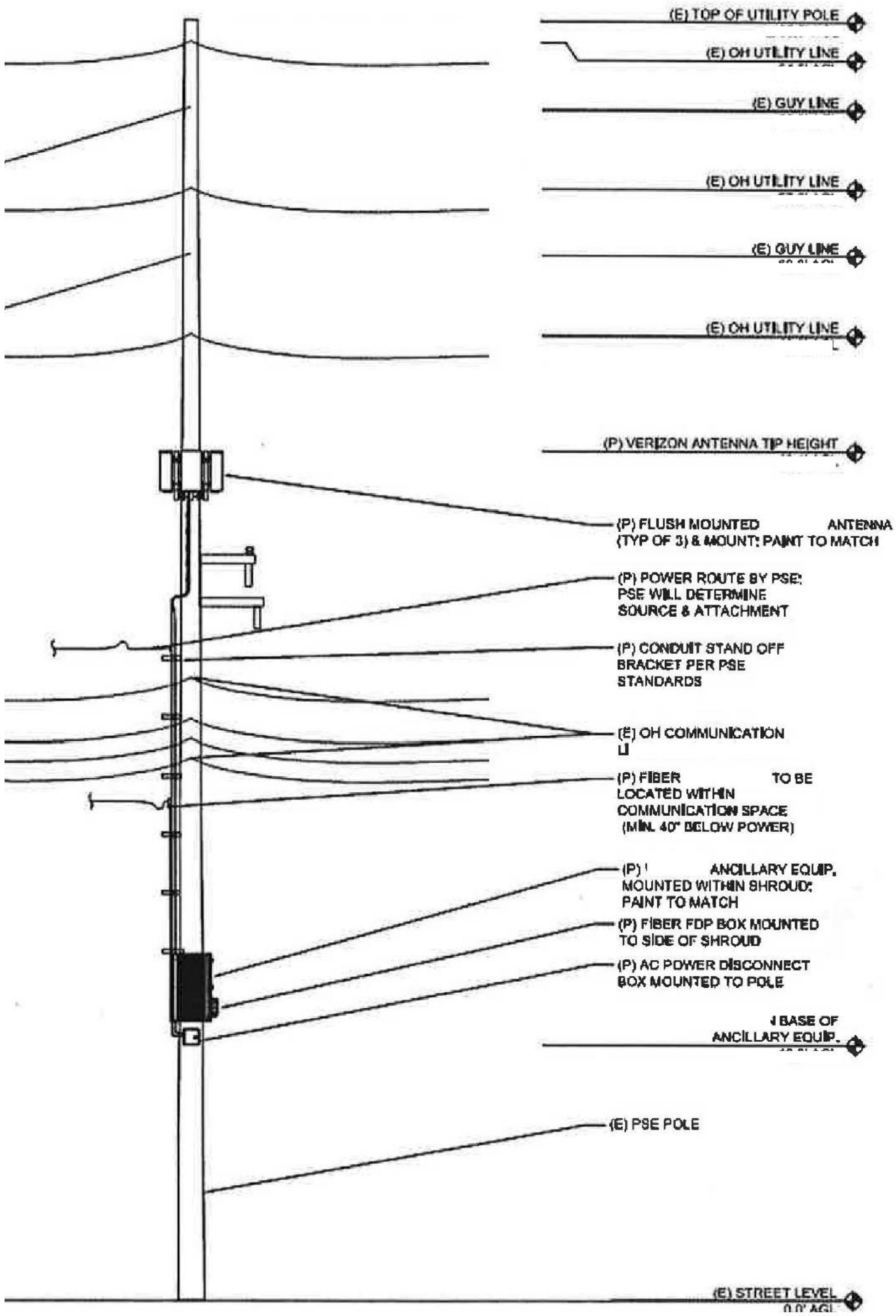
Example Concealment and Equipment Installations



Existing Distribution Utility Pole with Pole Extension

EXHIBIT B

Example Concealment and Equipment Installations



Existing Transmission Utility Pole

PUBLICATION SUMMARY
OF ORDINANCE NO. O-4940

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING SQF, LLC, D/B/A VERTA, A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE FOR 10 YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS SYSTEM IN THE RIGHTS-OF-WAY OF THE CITY OF KIRKLAND.

SECTION 1. Defines key terms used in the franchise.

SECTION 2. Grants franchisee authority to construct, operate, and maintain telecommunications facilities in the rights-of-way.

SECTION 3. Requires franchisee to construct and maintain facilities in a manner that does not interfere with public use.

SECTION 4. Establishes requirements for location and relocation of facilities.

SECTION 5. Provides indemnification, defense, and hold harmless requirements.

SECTION 6. Establishes enforcement mechanisms for default.

SECTION 7. Clarifies that the franchise is non-exclusive.

SECTION 8. Establishes franchise term.

SECTION 9. Requires compliance with all applicable federal, state, and City laws and regulations.

SECTION 10. Requires cooperation with the City's undergrounding policies.

SECTION 11. Requires separate City permits for facility installation and establishes standards for use of existing infrastructure and site-specific agreements for new structures or City-owned assets.

SECTION 12. Requires franchisee to maintain and provide records.

SECTION 13. Encourages joint trenching and shared excavation opportunities to minimize impacts in the rights-of-way and improve efficiency.

SECTION 14. Requires standard insurance coverage.

SECTION 15. Requires financial security to ensure performance, restoration, and compliance with franchise requirements.

SECTION 16. Governs assignment and transfer of the franchise and allows leasing of facilities.

SECTION 17. Addresses abandonment of facilities.

SECTION 18. Requires compliance with state "Call Before You Dig" laws.

SECTION 19. Miscellaneous standard provisions such as severability, administrative cost reimbursement (up to $15,000), and waiver provisions.

SECTION 20. Establishes notice addresses and methods.

SECTION 21. Authorizes publication of the ordinance by summary and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 7th day of July, 2026.

I certify that the foregoing is a summary of Ordinance O-4940 approved by the Kirkland City Council for summary publication.

~~Anastaciya Warhol, City Clerk~~
Emilee Ferguson, Deputy City Clerk