

ORDINANCE NO. C-16-

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE AMENDING THE CITY'S CODE OF ORDINANCES, CHAPTER 25, STREETS AND SIDEWALKS, BY CREATING A NEW ARTICLE XII THEREOF ENTITLED "THE CITY OF FORT LAUDERDALE COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY ORDINANCE"; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION OF COMMUNICATIONS FACILITY AND SERVICE PROVIDERS AND PASS THROUGH PROVIDERS; PROVIDING A PROCESS FOR ISSUANCE OF PERMITS; CREATING DESIGN STANDARDS FOR COMMUNICATIONS FACILITIES AND SITE IMPROVEMENTS, CREATING STANDARDS FOR CO-LOCATION OF FACILITIES; CREATING STANDARDS FOR USE AND RESTORATION OF PUBLIC RIGHTS-OF-WAY; PROVIDING FOR DISTANCE SEPARATION FROM RESIDENTIAL USES AND BETWEEN FACILITIES; PROVIDING FOR COMPENSATION TO THE CITY FOR THE USE OF PUBLIC RIGHTS-OF-WAY FOR THESE PURPOSES; PROVIDING FOR REVIEW BY THE CITY ENGINEER AND FOR RECOMMENDATIONS BY THE DEVELOPMENT REVIEW AND PROPERTY AND RIGHT-OF-WAY COMMITTEE FOR CERTAIN PERMIT APPLICATIONS; PROVIDING FOR SUSPENSION OF PERMITS; PROVIDING FOR AN APPEAL PROCESS; CREATING A PROCESS FOR THE INVOLUNTARY TERMINATION OF REGISTRATIONS; ESTABLISHING A DEADLINE FOR BRINGING EXISTING COMMUNICATIONS FACILITIES LOCATED IN PUBLIC RIGHTS-OF-WAY INTO COMPLIANCE WITH THIS ORDINANCE; PROVIDING INSURANCE, SECURITY FUND AND PERFORMANCE BOND REQUIREMENTS; PROVIDING INDEMNIFICATION OBLIGATIONS; PROVIDING REGULATIONS FOR ABANDONED COMMUNICATIONS FACILITIES; PROVIDING FOR ENFORCEMENT OF REMEDIES; REQUIRING REPORTS AND RECORDS, AND ALLOWING FOR INSPECTION THEREOF; PROVIDING A RESERVATION OF RIGHTS

41 FOR THE CITY TO AMEND THIS ARTICLE; PROVIDING A
42 LACK OF LIABILITY AND WARRANTY ON BEHALF OF
43 THE CITY; PROVIDING FOR SEVERABILITY AND AN
44 EFFECTIVE DATE.
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47 WHEREAS, the provision of telecommunications services to residents of and
48 visitors to the City of Fort Lauderdale ("City") is both an important amenity and a
49 necessity of public and private life in the City; and
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51 WHEREAS, the demand for telecommunications services has grown in recent
52 years and continues to grow exponentially, requiring the continual upgrading of
53 telecommunications facilities and services to satisfy such growing demand; and
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55 WHEREAS, the placement and maintenance of telecommunications facilities in
56 the public rights-of-way to satisfy the growing demand for telecommunications services
57 raises important issues with respect to the City's responsibility to manage its public
58 rights-of-way, which directly impacts the public health, safety and general welfare; and
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60 WHEREAS, the City has reviewed its ordinances and has concluded that they
61 must be updated, in conformance with federal and state telecommunications laws and
62 rules, in order to adequately regulate the placement and maintenance of existing, new
63 and expanded telecommunications facilities in the City's rights-of-way; and
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65 WHEREAS, adoption of the following ordinance is necessary to satisfy the above
66 objectives.
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68 NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY
69 COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:
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71 SECTION 1. The City Code of Ordinances Chapter 25, Streets and Sidewalks, is
72 hereby amended to create a new Article XII, "Communications Facilities in the Public
73 Rights-of Way which shall hereafter read as follows:
74

75 **Article XII, Communications Facilities in the Public Rights-of-Way.**

76
77 **Sec. 25-300 Title.**

78 This Article shall be known as "The City of Fort Lauderdale Communications
79 Facilities in the Public Rights-of-Way Ordinance."

80
81 **Sec. 25-301 Intent and Purpose.**
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83 It is the intent of the City to promote the public health, safety and general welfare
84 by: providing for the placement or maintenance of Communications Facilities in the
85 Public Rights-of-Way within the City; adopting and administering reasonable rules and
86 regulations not inconsistent with state and federal laws, including, but not limited to, Fla.
87 Stat. § 337.401, 47 USC § 1455(a) and Orders issued by the FCC, as they may be
88 amended from time to time, the City's home-rule authority, and in accordance with the
89 provisions of the Communications Act of 1934, as amended, and other federal and state
90 laws; to regulate the location and placement of antennas, towers and other
91 Communication Facilities and Wireless Communications Facilities in the Public Rights-
92 of-Way; to protect residential areas and other land uses from potential adverse
93 aesthetic and other impacts of Communications Facilities through careful siting and
94 Stealth Design techniques; to promote and encourage shared use (Co-location) of
95 Communications Facilities as a primary option generally preferred over the construction
96 of new single-use Communications Facilities; to promote and encourage utilization of
97 technology that will either eliminate or reduce the need for the erection of new
98 Communications Facilities; to avoid potential damage to Public Rights-of-Way caused
99 by Communications Facilities by ensuring that such Facilities are soundly and carefully
100 designed, constructed, modified and maintained; to ensure that Communications
101 Facilities are compatible with Surrounding Neighborhoods; to establish reasonable rules
102 and regulations necessary to manage the placement or maintenance of
103 Communications Facilities in the Public Rights-of-Way by Communications Services
104 Providers, Communications Facility Providers and other Pass-through Providers; and to
105 minimize disruption to the Public Rights-of-Way. In regulating its Public Rights-of-Way,
106 the City shall be governed by and shall comply with all applicable federal and state
107 laws.

108
109 Persons seeking to place or maintain Communications Facilities in the City's Public
110 Rights-of-Way shall comply with the provisions of this Article. Persons seeking to place
111 or maintain Communications Facilities on private property or other property to which the
112 City, Broward County, State of Florida or federal government has a fee simple or
113 leasehold interest in real property, exclusive of Public Rights-of-Way, located within the
114 municipal boundaries of the City shall comply with the provisions of the City's Unified
115 Land Development Regulations ("ULDR") to the extent it applies.

116

Sec. 25-302. Definitions.

For purposes of this Article, as used herein, unless otherwise defined or required, the following terms, phrases, words and their derivations shall have the meanings given. Where 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. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined shall be construed to mean the common and ordinary meaning.

Abandonment or *Abandon* shall mean the absence of any active user (Communications Services Provider) on a Communications Facility. If there is a lapse in time of any or all active users (Communications Facility Provider) operating from the Communications Facility at issue for a period of ninety (90) days, then said Facility shall be deemed to have been Abandoned and shall be removed within thirty (30) days thereafter. Provided, however that the term "Abandonment" or "Abandoned" shall not include cessation of all use of a Communications Facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the Communications Facility. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "Abandonment" of a Communications Facility in a Public Rights-of-Way.

Abut, when used in conjunction with a Lot or Parcel of land means a Lot or Parcel of land that shares all or part of a common lot line with another Lot or Parcel of land or right-of-way or a Lot or Parcel that shares all of part of a common boundary line with a Public Right-of-Way.

Adjacent or adjoining properties means (i) those lots or parcels of land that Abut another Lot or Parcel of land that is contiguous to a Communications Facility site or proposed site and (ii) the Lots or Parcels of land that would be contiguous to Lots or Parcels in (i), but for an intervening Local or Collector street or alley.

Arterial Roadway means a roadway route providing service which is relatively continuous and of relatively high traffic volume, long average trip length, high operating speed, and high mobility importance and constitutes the largest proportion of total travel as per the Broward County Trafficways Plan maintained by Broward County, as such Plan may be amended from time to time. In addition, every United States numbered highway is an arterial roadway.

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155 *City* shall mean the City of Fort Lauderdale, Florida.

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157 *City Commission* means the governing body of the City.

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159 *City Engineer* means a Professional Engineer, licensed to practice in the State of
160 Florida, employed or retained by the City and designated in writing by the City Manager,
161 as the chief engineer for the City and who is responsible for administration of Chapter
162 25 of the City's Code of Ordinances and is hereby vested with the authority to initiate
163 enforcement action by issuance of a citation violation notice pursuant to City Code Sec.
164 11-17. For the purposes of this Article, the term City Engineer shall also include his or
165 her designee.

166

167 *City Manager* means the chief executive officer of the City and the administrative
168 head of the City, as provided under Section 4.05 of the City Charter. The term City
169 Manager also includes his or her designee.

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171 *Code* means the Code of Municipal Ordinances of the City of Fort Lauderdale.

172

173 *Collector Roadway* means a route providing service that is of relatively moderate
174 average traffic volume, moderately average trip length, and moderately average
175 operating speed. Such a route also collects and distributes traffic between local roads
176 or arterial roads and serves as a linkage between land access and mobility needs as
177 per the Broward County Trafficways Plan maintained by Broward County, as such Plan
178 may be amended from time to time.

179

180 *Co-location* shall mean the situation in which a second or subsequent
181 Communications Services Provider or a Pass-Through Provider uses an existing
182 Communications Facility to locate a second or subsequent Communications Facility.
183 The term includes the ground, platform, or roof installation of equipment enclosures,
184 cabinets, or buildings, and cables, brackets, and any other equipment associated with
185 the location and operation of the Communications Facility.

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187 *Communications Facility* shall mean a facility that may be used to provide
188 Communications Services, as per Fla. Stat. § 337.401, as same may be amended from
189 time to time. Multiple cables, conduits, strands, or fibers located within the same conduit
190 shall be considered one Communications Facility. The term Communications Facility
191 shall also include a Wireless Communication Facility, Pass-Through Provider, Tower or

Pole. The term Communications Facility shall not include below-grade communications service facilities nor shall it include at-grade communications service facilities as regulated under City Code Section 25-100.1.

Communications Facility Provider shall mean a person (other than a Communications Services Provider operating one or more Communications Facilities located within the City) who is engaged, directly or indirectly, in the business of leasing, licensing, subleasing, subletting or hiring to one or more Communications Service Providers all or a portion of the tangible personal property used in a Communications Facility, including but not limited to, towers, poles, tower space, antennas, transmitters, and transmission line. A Pass-Through Provider is a Communications Facility Provider. Provisions of this Article that apply only to Communications Facility Providers shall not apply to Communication Services Providers, even if the Communications Services Provider also operates, licenses, leases, subleases, or sublets Communications Facilities or Wireless Communications Facilities.

Communications Services shall mean the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance, as per Fla. Stat. § 202.11, as same may be amended from time to time. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

- (a) Information services.
- (b) Installation or maintenance of wiring or equipment on a customer's premises.
- (c) The sale or rental of tangible personal property.
- (d) The sale of advertising, including, but not limited to, directory advertising.
- (e) Bad check charges.
- (f) Late payment charges.
- (g) Billing and collection services.
- (h) Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

- (i) Communication Services transmitted by way of below-grade & above-grade communications service facilities regulated under City Code Section 25-100.1

Communications Services Provider means a person who provides Communications Services, but does not include a provider of below-grade communications service facilities nor does it include at-grade communications service facilities as regulated under City Code Section 25-100.1.

Communications Services Tax shall mean the local communications services tax authorized to be levied and collected by counties and municipalities upon charges for Communications Services, pursuant to Fla. Stat. § 202.20, as same shall be amended from time to time.

Corner Lot means a lot located at the intersection of two (2) or more Public Rights-of-Way, with a property line bordering on at least two (2) of the Public Rights-of-Way.

Corner Yard means that portion of a Corner Lot, which Abuts the Public Right-of-Way and is not the Front yard.

County means Broward County, Florida.

Day(s). In computing any period of time expressed in day(s) in this Article, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

Distributed Antenna System or *DAS*, is a network of spatially separated antenna nodes connected to a common source via a transport medium that provides Wireless Communications Service within a geographic area or structure. A DAS is a Communications Facility.

Existing Structure shall mean a structure that exists at the time an application for permission to place antennas or other facilities on the preexisting structure is filed with the City. The term includes any structure that can structurally support the attachment of

antennas or other facilities in compliance with applicable codes. The term Existing Structure shall not include below-grade communications facilities and at-grade communications facilities as regulated by City Code Section 25-100.1.

Facility means a Communications Facility.

FCC shall mean the Federal Communications Commission.

Front Yard means that portion of a Lot or Parcel of land, which is oriented in such a manner that its main entrance abuts the Public Right-of-Way, and includes the Front Yard setback as proscribed by the U.L.D.R.

Grade means the highest point in the Public Right-of-Way adjacent to a Communications Facility site or proposed site.

Graffiti means any inscriptions, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any Communications Facility whether or not authorized by the Registrant of the Communications Facility.

In Public Rights-of-Way or in the Public Rights-of-Way shall mean in, on, over, under or across the Public Rights-of-Way within the City over which the City has jurisdiction, control and authority to regulate. The term shall also include those rights-of-way over which the County or State has jurisdiction and authority under the Florida Transportation Code, Chapter 334, Florida Statutes, as same may be amended from time to time, but where the County or State or both have delegated to the City the authority to regulate the registration, permitting, placement, installation and maintenance of Communications Facilities in accordance with Article XII, Chapter 25 of the City Code of Ordinances.

Local Road means a route providing service that is of relatively low average traffic volume, short average trip length or minimal through-traffic movements, and high land access for abutting property and is not included in the Broward County Trafficway Plan.

Lot means the same as the term is defined in U.L.D.R. Section 47-35.1.

Neighborhood Organization means an organization, typically a neighborhood association, occupying and representing a geographically distinct specific area that does not overlap with any other Neighborhood Organization that has undergone a neighborhood recognition process and is designated by the Mayor's Office as the official representative for the distinct geographic area at issue.

Order, as used in the definition of "Wireless Service Provider", shall mean:

(a) The following orders and rules of the FCC issued in FCC Docket No. 94-102:

(i) Order adopted on June 12, 1996, with an effective date of October 1, 1996, the amendments to s.20.03 and the creation of s.20.18 of Title 47 Code of Federal Regulations adopted by the FCC pursuant to such order.

(ii) Memorandum and Order No. 97-402, adopted on December 23, 1998.

(iii) Order No. FCC DA 98-2323, adopted on November 13, 1998.

(iv) Order No. FCC 98-345, adopted December 31, 1998.

(b) Orders and rules subsequently adopted by the FCC relating to the provision of 911 services, including Order Number FCC-05-116, adopted May 19, 2005.

(c)

Parcel means the same as the term is defined in U.L.D.R. Section 47-35.1

Pass-Through Provider means any person who places or maintains a Communications Facility in the Public Rights-of-Way of the City and who, as to a particular Communications Facility, does not remit taxes imposed by the City pursuant to Chapter 202, Fla. Stat. as same may be amended from time to time. Depending upon how the Communications Facility is utilized, the person who places or maintains a particular Communications Facility may be either a Pass-Through Provider, or a Communications Service Provider as to that particular Communications Facility.

Permit shall include, but not be limited to City of Fort Lauderdale Right-of-Way engineering and construction permits issued by the City Engineer or his or her designee.

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344

345 *Person* shall include any individual, firm, association, joint venture, partnership,
346 estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity
347 of any kind, successor, assignee, transferee, personal representative, and all other
348 groups or combinations, but shall not include the City to the extent permitted by
applicable law.

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350

351 *Place or maintain or placement or maintenance or placing or maintaining* shall
352 mean to erect, construct, install, maintain, place, repair, extend, expand, remove,
353 occupy, locate or relocate. A person that owns or exercises physical control over
354 Communications Facilities in Public Rights-of-Way, such as the physical control to
355 maintain and repair, is "placing or maintaining" the facilities. A person providing service
356 only through resale or only through use of a third party's facilities is not "placing or
357 maintaining" the Communications Facilities through which such service is provided. The
358 transmission and receipt of radio frequency signals through the airspace of the Public
359 Rights-of-Way does not constitute "placing or maintaining" facilities in the Public Rights-
of-Way.

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362 *Pole* shall mean any structure designed primarily to support a Communications
Services Provider's antennas. A pole is a Communications Facility.

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365 *Public Rights-of-Way* shall mean a Public Right-of-Way, Arterial Roadway,
366 Collector Roadway, Local Road, highway, street, or bridge for which the City is the
367 authority that has jurisdiction and control and may lawfully grant access to pursuant to
368 applicable law, and includes the surface, the air space over the surface and the area
369 below the surface; . The term shall also include those rights-of-way within the corporate
370 boundaries of the City over which the County or State has jurisdiction and authority
371 under the Florida Transportations Code, Chapter 334, Florida Statutes, as same may be
372 amended from time to time, but where the County or State or both have delegated to
373 the City the authority to regulate the registration, permitting, placement, installation and
374 maintenance of Communication Facilities in accordance with Article XII, Chapter 25 of
375 the City Code of Ordinances. "Public Rights-of-Way" shall not include private property,
376 nor shall the term include alleys. "Public Rights-of-Way" shall not include any real or
377 personal City property except as described above and shall not include City buildings,
378 fixtures, poles, conduits, facilities or other structures or improvements, regardless of
whether they are situated in the Public Rights-of-Way.

379

380 *Registrant* shall mean a Communications Services Provider, Communications
381 Facility Provider or Pass-Through Provider that has registered with the City in
382 accordance with the provisions of Section 25-303 this Article and holds an effective
383 Registration.

384
385 *Registration* or *register* shall mean the process described in this Article whereby
386 a Communications Services Provider, Communications Facility Provider or Pass-
387 Through Provider provides certain information to the City by which it is determined
388 whether the Person will be authorized to become a Communications Service Provider,
389 Communications Facility Provider or Pass-Through Provider pursuant to this Article.

390
391 *Repurposed Structure* shall mean an Existing Structure that has been renovated,
392 reconfigured, or replaced with a similar structure so as to continue serving its existing
393 purpose while also supporting the attachment of Communication Facilities through
394 Stealth Design that is approximately in the same location as the Existing Structure and
395 in such a manner that does not result in a net increase in the number of structures
396 located within the Public Rights-of-Way and does not interfere with pedestrian or
397 vehicular access, is Americans with Disabilities Act and Florida Building Code
398 compliant. By way of illustration only, where a light pole existing within the Public
399 Rights-of-Way is removed and is replaced with a new light pole that is substantially
400 similar to the old light pole but now supports the attachment or integration of
401 Communication Facilities, the new light pole shall be considered a "Repurposed
402 Structure." Unless stated otherwise, all references to "Communications Facilities" shall
403 also apply to Repurposed Structures. To "repurpose an Existing Structure" shall mean
404 the act of renovating, reconfiguring, or replacing an Existing Structure as described
405 above. The Provider that later removes a Repurposed Structure shall reinstall a new
406 light pole, or other applicable pole in the public right-of-way, at the direction of the City.
407 During the life of the use of Repurposed Structure the Provider shall pay all costs
408 associated with the electricity, light bulbs, maintenance, and replacement of the
409 Repurposed Structure.

410 *Residential Block* means the Lots or Parcels that abut or are contiguous to a
411 Public Right-of-Way within (i) the City's residential districts as set forth in the City's
412 U.L.D.R., (ii) RO, ROA and ROC zoning districts as set forth in the City's U.L.D.R. or (iii)
413 Broward County residential zoning districts and includes rights-of-way that are
414 contiguous to the aforementioned zoning districts.

415 *Signage* means any display of characters, ornamentation, letters or other display
416 such as, but not limited to, a symbol, logo, picture, or other device used to attract

attention, or to identify, or as an advertisement, announcement, or to indicate directions, including the structure or frame used in the display.

Surrounding Neighborhood means the area within five hundred (500) feet, as measured along ordinary vehicular travelways, of the Communications Facility site or proposed Communications Facility site.

State means the State of Florida.

Stealth Design shall mean a method of camouflaging any tower, antenna or other Communications Facility, including, but not limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible. Stealth Design may include a Repurposed Structure.

Tower shall mean any structure designed primarily to support the antennae of a Communications Facility. A Tower is a Communications Facility.

U.L.D.R. means the City's Unified Land Development Regulations, Chapter 47 of the City of Fort Lauderdale Code of Ordinances.

Wireless Communications Facility means equipment or Facilities located within Public Rights-of-Way, used to provide Wireless Service and may include, but is not limited to, antennae, Towers, equipment enclosures, cabling, antenna brackets and other such appurtenant equipment. Wireless Communications Facilities within Public Rights-of-Way may be comprised of Distributed Antenna Systems and shall mean equipment used to provide Wireless Service, as the phrase, Wireless Communications Facility, is further defined and limited in Fla. Stat. § 365.172, as same may be amended from time to time. Placing a Wireless Communications Facility on an existing building does not cause the existing building to become a Wireless Communications Facility. A Wireless Communications Facility is a type of Communications Facility. The term *Wireless Communications Facility* shall not include below-grade communications service facilities nor shall it include at-grade communications service facilities as regulated under City Code Section 25-100.1.

Wireless Service Provider shall mean a person who provides Wireless Service and is either (a) subject to the provisions of the Order or (b) elects to provide wireless

454 911 service or E911 service in Florida. A Wireless Service Provider is a type of
455 Communications Services Provider.

456 *Wireless Service* shall mean “commercial mobile radio service” as provided
457 under §§ 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C.
458 §§ 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-
459 66, August 10, 1993, 107 Stat. 312, as per Fla. Stat. §365.172, as same may be
460 amended from time to time. The term includes service provided by any wireless real-
461 time two-way wire communication device, including radio-telephone communications
462 used in cellular telephone service; personal communications service; or the functional or
463 competitive equivalent of a radio-telephone communications line used in cellular
464 telephone service, a personal communications service, or a network radio access line.
465 The term does not include Communications Services Providers that offer mainly
466 dispatch service in a more localized, non-cellular configuration; providers offering only
467 data, one-way, or stored-voice services on an interconnected basis; providers of air-to-
468 ground services; or public coast stations.

469

470 **Section 25-303. Registration for placing or maintaining Communications**
471 **Facilities in Public Rights-of-Way.**

472

473 (a) *Registration.* A Communications Facility Provider, Communications
474 Services Provider or Pass-through Provider that desires to place or maintain a
475 Communications Facility or Pass-Through Facility in the Public Rights-of-Way in the
476 City shall first register with the City in accordance with this Article. Subject to the terms
477 and conditions prescribed in this Article, a Registrant may place or maintain a
478 Communications Facility or Pass-Through Facility in the Public Rights-of-Way.

479

480 (1) A Communications Facility Provider, Communications Services
481 Provider or Pass-Through Provider with an existing Communications Facility in
482 the Public Rights-of-Way as of the effective date of this Article has sixty (60) days
483 from the effective date of this Article to comply with the terms of this Article,
484 including, but not limited to, registration.

485

486 (2) A Communications Facility Provider, Communications Services
487 Provider or Pass-through Provider with an existing Communications Facility, or
488 Pass-Through Facility in the Public Rights-of-Way who fails to so comply shall be
489 in violation of City Code as provided by City Code Section 1-6 and City Code
490 Chapter 11.

491

492 (b) *No property right arises from Registration.* A Registration shall not convey
493 any title, equitable or legal, in a Public Right-of-Way. Registration under this Article
494 governs only the placement or maintenance of Communications Facilities or Pass-
495 Through Facilities in a Public Right-of-Way. Registration does not excuse a
496 Communications Facility Provider, Communications Services Provider or Pass-Through
497 Provider from obtaining appropriate access or pole attachment agreements before
498 locating its Facilities on the City's or another person's Facilities. Registration does not
499 excuse a Communications Facility Provider, Communications Services Provider or
500 Pass-Through Provider from complying with all applicable laws, including this Article, or
501 other City ordinances, codes or regulations.

502

503 (c) *Content of Registration.* Each Communications Facility Provider,
504 Communications Services Provider or Pass-Through Provider that desires to place or
505 maintain a Communications Facility within the Public Rights-of-Way shall file a single
506 Registration with the City that shall include the following information:

507

508 (1) Name of the Registrant; and

509

510 (2) Name, address and telephone number of the Registrant's primary
511 contact person in connection with the Registration and of the person to contact in
512 case of emergency; and

513

514 (3) Evidence of the insurance coverage required under this Article and
515 acknowledgment that Registrant has received and reviewed a copy of this Article;
516 and

517

518 (4) A copy of federal or state certification authorizing the Registrant to
519 provide Communications Services; and

520

521 (5) If the Registrant is a corporation or limited liability company proof of
522 authority to do business in the State of Florida, which may be satisfied by the
523 number of its corporate certification or by other means; and

524

525 (6) Evidence that a security fund has been established in accordance
526 with this Article; and

527

(7) A statement by the Registrant in the Registration that by execution of the Registration application and acceptance of the Registration, the Registrant agrees to the terms of indemnification as provided by City Code Section 25-311.

(d) *City Engineer review and approval.* The City Engineer shall review the information submitted by the Registrant in the Registration. If the Registrant submits information in accordance with subsection (c) above, the Registration shall be effective and the City Engineer shall notify the Registrant of the effectiveness of Registration in writing. If the City Engineer determines that the information has not been submitted in accordance with subsection (c) above, the City Engineer shall notify the Registrant in writing of the non-effectiveness of Registration and reasons for the non-effectiveness. The City Engineer shall so notify a Registrant within thirty (30) days after receipt of Registration information from the Registrant.

(e) *Cancellation.* A Registrant may cancel a Registration upon written notice to the City that the Registrant will no longer place or maintain any Communications Facilities in the Public Rights-of-Way. A Registrant cannot cancel a Registration if the Registrant continues to place or maintain any Communications Facilities in the Public Rights-of-Ways.

(f) *Registration shall be nonexclusive.* Registration shall not establish any right or priority to place or maintain a Communications Facility in any particular area in the Public Rights-of-Way. Registrations are expressly subject to any future amendment to or replacement of this Article and may further be subject to any additional City ordinances, as well as any state or federal laws that may be enacted.

(g) *Renewal of Registration.* A Registrant who secured its Registration by April 1 of an even-numbered year in accordance with the Registration requirements of this Article shall renew its Registration by April 1 of the next ensuing even-numbered year and successive even-numbered years thereafter. A Registrant who secured its Registration by April 1 of an odd-numbered year in accordance with the Registration requirements of this Article shall renew its Registration by April 1 of the next ensuing odd-numbered year and successive odd-numbered years thereafter. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (c) above a Registrant shall provide updated information to the City. Registration renewals shall include an inventory of the Registrant's newly installed Communications Facilities or the presence of any Abandoned Communication Facilities since the prior Registration or Registration renewal. If no information in the then-existing Registration has changed, the renewal may state that no information has changed. Failure to renew

a Registration may result in the City restricting the issuance of additional Permits until the Communications Facility Provider, Communications Services Provider or Pass-through Provider as complied with the Registration requirements of this Article.

(h) *Permits required of Registrants.* In accordance with City ordinances, code or regulations and this Article, a Permit shall be required of a Communications Facility Provider, Communications Services Provider or Pass-through Provider that desires to place or maintain a Communications Facility in the Public Rights-of-Way. A Permit may be obtained by or on behalf of a Registrant having an effective Registration if all Permit requirements are met.

(i) *Compensation to City.* A Registrant that places or maintains Communications Facilities in the Public Rights-of-Way shall be required to pay compensation to the City as required by applicable law and ordinances.

Section 25-304. Notice of transfer, sale or assignment of assets in Public Rights-Of-Way.

(a) A Registrant shall not transfer, sell or assign all or any portion of its assets located in the Public Rights-of-Way except to a person holding a valid Registration issued pursuant to Section 25-303, hereof.

(b) Written notice of any such proposed transfer, sale or assignment, along with assignee/transferee's signed and sworn certification of its compliance with the requirements of this Article, shall be provided by such Registrant to the City at least five (5) days prior to the effective date of the transfer, sale or assignment.

(c) If Permit applications are pending in the name of the transferor/assignor, the transferee/assignee shall notify the City Engineer that the transferee/assignee is the new applicant.

(d) A violation of the requirements of this Section 25-304 shall be a violation of this Code and the Registrant who is alleged to have violated any of the provisions of this Section 25-304 may be subject to the enforcement remedies set forth in Code Sections 1-6 and 25-314.

(e) The City reserves the right, as allowed by law, to exclude persons other than Communications Facility Providers; Communications Services Providers or Pass-

through Providers from its Public Rights-of-Way for the purpose of establishing Communication Facilities.

(f) Transfers or assignments of a Communications Facility to persons other than Communications Facility Providers, Communications Services Providers or Pass-through Providers who will operate at least one Communications Facility within the City require compliance with this section to insure continued use of the Public Rights-of-Way.

Section 25-305. Permit application process; standards for placement or maintenance of a Communications Facility in Public Rights-of-Way.

(a) *Other applicable regulations.* A Registrant shall at all times comply with and abide by all applicable provisions of the state and federal law and City ordinances, codes and regulations in placing or maintaining a Communications Facility in the Public Rights-of-Way.

(1) Each Permit application for a Communications Facility must demonstrate that it meets the requirements of the Florida Building Code, as it may be amended from time to time, and a Permit under the Florida Building Code shall be required.

(b) *Compliance with all applicable Permits.*

A Registrant shall not commence to place or maintain a Communications Facility, including without limitation a Co-location thereof, in the Public Rights-of-Way until all applicable Permits, if any, have been issued by the City; provided, however, in the case of an emergency, a Registrant may restore its damaged Facilities in the Public Rights-of-Way to their pre-emergency condition or replace its destroyed Facilities in the Public Rights-of-Way with Facilities of the same size, character and quality, all without first applying for or receiving a Permit.

(i) The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service.

(ii) A Registrant shall provide prompt notice to the City of the repair or replacement of a Communications Facility in the Public Rights-of-Way in the event of an emergency, and shall be required to obtain an

after-the-fact Permit if a Permit would have originally been required to perform the work undertaken in the Public Rights-of-Way in connection with the emergency.

(1) In granting Permits, the City may impose reasonable conditions governing the placement or maintenance of a Communications Facility in the Public Rights-of-Way. Permits shall apply only to the areas of Public Rights-of-Way specifically identified in the Permit.

(2) *Blanket Permits.* The City may issue a blanket Permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual Permits.

(3) The City's policies strongly favor strengthening utility infrastructure and in particular as it relates to flooding and hurricane related events. Subject to any applicable regulatory approval, the Communications Facility Providers will implement an infrastructure hardening plan for any Communications Facilities within the City's boundaries.

(c) *Permit Application.* As part of any Permit application to place a new or replace an existing Communications Facility in the Public Rights-of-Way, including, without limitation, a Co-location, the Registrant shall provide the following:

(1) The location of the proposed Facilities, including a description of the Facilities to be installed, where the Facilities are to be located, and the dimensions of the Facilities that will be located in Public Rights-of-Way; and

(2) With respect to proposals to locate a new Communications Facility or replace an existing Communications Facility in the Public Rights-of-Way, engineering documentation demonstrating either:

(i) how the proposed Facility can accommodate multiple Co-locations; or

(ii) why the City's interest in safe, aesthetic, efficient and effective management of the Public Rights-of-Way is better served by

the proposed Facility than by a Facility that could accommodate multiple Co-locations; or

(iii) why a Repurposed Structure is not better suited to or feasible for the site;

(3) A description of the manner in which the Facility will be installed (i.e. anticipated construction methods or techniques); and

(4) A maintenance of traffic plan for any disruption of the Public Rights-of-Way; and

(5) For purposes of assessing impacts on Public Rights-of-Way resources, effects on Surrounding Neighborhoods and other properties within the potentially impacted area and potential for Co-locations or Repurposed Structures, information on the ability of the Public Rights-of-Way to accommodate the proposed Facility, including information that identifies all above-ground and below ground structures (including light poles, power poles, equipment boxes, below-grade and above-grade communications service facilities as regulated under City Code Section 25-100.1, and antenna), currently existing in the Public Rights-of-Way within a 1,000 foot radius of the proposed Facility (such information may be provided without certification as to correctness, to the extent obtained from other Registrants with Facilities in the public rights-of-way); however, if the City Engineer determines that it either:

(i) better serves the City's interests in safe, aesthetic, efficient and effective management of the Public Rights-of-Way; or

(ii) is necessary to address a documented lack of capacity for one or more carriers; or

(iii) will help minimize the total number of Communications Facilities necessary to serve a particular area;

then the 1,000-foot distance requirement may be modified; and the Registrant applying for the Permit shall provide competent substantial evidence to reflect that the above conditions are met, in order to waive strict compliance with the

1,000 foot distance requirements set forth in this subsection 5 (i), (ii) and (iii), and ensure compliance with all the other requirements of this Article; and

(6) Given the Facility proposed, an estimate of the cost of restoration to the Public Rights-of-Way; and

(7) The timetable for construction of the project or each phase thereof, and the areas of the City which will be affected; and

(8) Whether all or any portion of the proposed Facilities will be rented, hired, leased, sublet or licensed from or to any third party and, if so, the identity, and contact information of that third party; and

(9) Prior to installation of any new or additional Facilities in the Public Rights-of-Way, including but not limited to Co-location at a specific site, the Communications Facility Provider shall be required to remove any and all of the Registrant's obsolete, unutilized or Abandoned equipment within the City. Any application to install new or additional equipment shall identify the Abandoned, obsolete or unutilized equipment that shall be removed prior to the installation of any new or additional technology or Facilities in the Public Rights-of-Way; and

(10) If there exists a Communications Facility by the same Communications Facility Provider within the Public Right-of-Way that is adjacent to or within a 1,000 foot radius of the proposed new Communications Facility location, then the Communications Facility Provider shall be required to remove and consolidate the equipment into one facility, so as to not create a second location within such a minimal distance; and

(11) Such additional information with respect to the placement or maintenance of the Communications Facility that is the subject of the Permit application that the City finds reasonably necessary for the review of such Permit application; and

(12) An application for a Permit is not complete until the Registrant has provided evidence that it has provided notice of the Registrant's intent to file an application for a Permit to install a Facility within the proposed site, such notice being provided to

(i) property owners within the Surrounding Neighborhood, together with

(ii) The President or Chairman of City's recognized Neighborhood Organization within which the proposed site is located and provide the groups within (i) and (ii) above with a minimum of thirty (30) days for comments to be provided to the City Engineer.

(iii) The notice shall describe the scope of the proposed work, identify the name and address of the property owners within the Surrounding Neighborhood and together with the President and Chairman of the relevant recognized Neighborhood Organization, and describe the potential impact to such property owners.

(iv) The notice shall also require the Registrant to hold a public information meeting, which shall include the property owners within the Surrounding Neighborhood and the City's recognized Neighborhood Organization within which the proposed site is located, for the purpose of answering questions and taking comments from the affected property owners and members of the City's recognized Neighborhood Organization identified above.

(v) After the public information meeting, the Registrant shall meet with City staff as soon as practicable to review comments received at the public information meeting and attempt to resolve all negative comments or issues raised, prior to filing an application for a Permit for the proposed Facility.

(vi) The property owners within the Surrounding Neighborhood are those property owners who are listed in the most recent ad valorem tax records of the Broward County Property Appraiser's Office.

(vii) The application for a Permit is not complete until conditions (i) through (vi) above have been met.

(viii) The notice to the property owners and the City's recognized Neighborhood Organization as identified above, shall contain the address and e-mail address for the City Engineer for the purpose of providing comments to the City Engineer. The Registrant will have thirty (30) days to provide a response to the City Engineer to each comment. Such response may include an amendment of the application. Thereafter, the City Engineer shall have thirty (30) days to grant, grant with conditions, or deny the Permit application.

(d) *Power to regulate Public Rights-of-Way; Reasonable Conditions attached to Permit.* To the extent not otherwise prohibited by state or federal law, the City shall have the power to prohibit or limit the placement of new or additional Communications Facilities within a particular area of Public Rights-of-Way and may consider, among other things and without limitation, the sufficiency of space to accommodate all of the present Communications Facilities and pending applications to place and maintain utility facilities in that area of the Public Rights-of-Way, the sufficiency of space to accommodate City announced plans for public improvements or projects that the City determines are in the best public interest, the impact on traffic and traffic safety, and the impact upon existing facilities in the Public Rights-of-Way. The City Engineer is hereby delegated the authority to impose additional reasonable conditions in accordance with the foregoing to ensure the public health, safety and welfare, and peaceful enjoyment of City residents and businesses.

(e) *Avoidance of unreasonable interference with Public Rights-of-Way.*

(1) All Communications Facilities shall be placed or maintained so as not to unreasonably interfere with the use of the Public Rights-of-Way by the public and public utility providers and with the rights and convenience of property owners who adjoin any of the Public Rights-of-Way.

(2) The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the Public Rights-of-Way as well as joint trenching or the Co-location of facilities in existing conduit is strongly encouraged, and should be employed wherever feasible.

(3) To the extent not prohibited by federal and state law, the City shall require any Registrant that does not have Communications Facilities in the City as of the date of adoption of this Article to place any new cables, wires, fiber

optics, splice boxes and similar communications facilities underground, unless such Communications Facilities can be Co-located.

(f) *Safety practices.* All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of Communications Facilities or Wireless Communications Facilities.

(g) *Restoration of Public Rights-of-Way.* After the completion of any placement, maintenance or removal of a Communications Facilities in Public Rights-of-Way or each phase thereof, a Registrant shall, at its own expense, restore the Public Rights-of-Way to its existing condition prior to such work. If the Registrant fails to make such restoration within 30 days following the completion of such placement or maintenance, the City may perform restoration and charge the costs of the restoration against the Registrant in accordance with Florida Statutes § 337.402, as same may be amended from time to time. For twelve (12) months following the original completion of the work, the Registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this Article at its own expense.

(h) *Removal or relocations governed by Florida law.* Removal or relocation at the direction of the City Engineer of a Registrant's Communications Facilities in Public Rights-of-Way shall be governed by the provisions of Florida Statutes §§ 337.403 and 337.404, as they may be amended from time to time. Subject to the aforementioned Florida Statutes §§ 337.403 and 337.404 and other provisions of law, whenever existing overhead utility distribution facilities are converted to underground facilities, any Registrant having Communications Facilities on Poles or other Facilities that are to be removed shall arrange for the conversion to underground facilities on the same terms and conditions as the other utilities that are being converted to underground facilities.

(i) *Permit does not create property right.* A Permit from the City constitutes authorization to undertake only certain activities in the Public Rights-of-Way in accordance with this Article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the Public Rights-of-Way.

(j) *Maintenance in accordance with industry standards and applicable law.* A Registrant shall maintain its Communications Facilities in the Public Rights-of-Way in a manner consistent with accepted industry standards and best practices and applicable law.

(1) Owners of Communications Facilities located in Public Rights-of-Way shall, at all times, employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted industry standards and best practices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public, adjacent property owners and other Facilities within the Public Rights-of-Way.

(2) Owners of Communications Facilities located in Public Rights-of-Way shall install and maintain such Communications Facilities, wires, cables, fixtures and other appurtenant equipment in compliance with the requirements of the Florida Building Code, National Electric Safety Code, Florida Administrative Code and all FCC, state and local regulations, and in such a manner that will not interfere with the use of other property or other facilities within or adjacent to the Public Rights-of-Way.

(3) All Communications Facilities, wires, cables, fixtures and other appurtenance equipment shall, at all times, be kept and maintained in good condition, order and repair so that the same shall not endanger the life or property of any person or other facilities in the Public Rights-of-Way.

(4) All Communications Facilities shall maintain compliance with radio frequency emission standards of the FCC or any superseding City, state or county regulations.

(k) *Underground Facility Damage Prevention and Safety Act.* In connection with excavation in the Public Rights-of-Way, a Registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in Florida Statutes, Chapter 556, the Underground Facility Damage Prevention and Safety Act, as it may be amended from time to time.

(l) *Use of due caution.* Registrants shall use and exercise due caution, care and skill in performing work in the Public Rights-of-Way and shall take all reasonable steps to safeguard work site areas, including, but not limited to those safeguard set forth in Chapter 33, Florida Building Code.

(m) *Coordination with other work in Public Rights-of-Way.* Upon request of the City, and as notified by the City of the other work, construction, installation or repairs referenced below, a Registrant may be required to coordinate placement or maintenance activities under a Permit with any other work, construction, installation or

repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject Public Rights-of-Way, and a Registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the Public Rights-of-Way.

(n) *Avoidance of interference, displacement, damage or destruction of other facilities within the Public Rights-of-Way.* A Registrant shall not place or maintain its Communications Facilities in such a manner as to interfere with, displace, damage or destroy any other utility facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the City or any other person's facilities lawfully occupying the Public Rights-of-Way of the City.

(o) *No warranties regarding fitness, suitability or availability of City's Public Rights-of-Way.* The City makes no warranties or representations regarding the fitness, suitability, or availability of the City's Public Rights-of-Way for the Registrant's Communications Facilities or Wireless Communications Facilities and any performance of work, costs incurred or services provided by the Registrant shall be at the Registrant's sole risk. Nothing in this Article shall affect the City's authority to add, vacate, modify, abandon or otherwise dispose of Public Rights-of-Way, and the City makes no warranties or representations regarding the availability of any added, vacated, modified or abandoned Public Rights-of-Way for Communications Facilities or Wireless Communications Facilities.

(p) *Right of inspection.* The City shall have the right to make such inspections of Communications Facilities placed or maintained in its Public Rights-of-Way as it finds necessary to ensure compliance with this Article.

(q) *Content and format of Permit Application; requirement of "as built" plans.* A Permit Application to place new or replace existing Communications Facilities in the Public Rights-of-Way shall include plans showing the location of the proposed installation of Facilities in the Public Rights-of-Way. If the plans so provided require revision based upon actual installation, the Registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the City Engineer, provided such electronic format is maintained by the Registrant. Such plans in a format maintained by the Registrant shall be provided at no cost to the City. Upon completion of any Communications Facilities, the provider shall furnish to the City, at no cost to the City, one complete set of sealed "as built" plans, or in the case of any underground facilities, a sealed survey showing the exact location of such facilities, including their depth; or in either case, such other documentation describing the location

(including height or depth, as the case may be) of facilities as the City Engineer may approve. This requirement shall be in addition to, and not in lieu of, any filings the Registrant is required to make under the Underground Facility Damage Prevention and Safety Act set forth in Florida Statutes Chapter 556, as it may be amended from time to time. The fact that such plans or survey is on file with the City shall in no way abrogate the duty of any person to comply with the aforesaid Underground Facility Damage Prevention and Safety Act when performing work in the Public Rights-of-Way. Any proprietary confidential business information obtained from a Registrant in connection with a Permit Application or a Permit shall be held confidential by the City to the extent provided in Florida Statutes § 202.195, as same may be amended from time to time. In addition to the foregoing the Permit Application shall include:

(1) An affidavit attesting to the fact that the Registrant made diligent efforts for permission to install or Co-locate the Registrant's Communications Facility on City-owned structures located within a 1,000 foot radius of the proposed Communications Facility site.

(2) An affidavit attesting to the fact that the Registrant made diligent efforts to install or Co-locate the Registrant's Communications Facility or Wireless Communications Facility on private property within a 1,000 foot radius of the proposed site.

(3) A description of the technological design plan proposed by the Registrant. The Registrant must demonstrate why design alternatives that utilize an existing Facility cannot be utilized.

(4) Written, technical evidence from a qualified radio frequency engineer that the proposed Communications Facility cannot be Co-located on another Facility within a 1,000 foot radius of the proposed site due to coverage or other technical requirements or limitations.

(5) A written statement from a qualified radio frequency engineer that the construction and placement of the Communications Facility or Wireless Communications Facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and non-residential properties.

981 (6) Written technical evidence from a professional engineer licensed in
982 the State of Florida acceptable to the City's Fire Marshall and the Building Official
983 that the proposed site of the Communications Facility does not pose a risk of
984 explosion, fire or other danger to life or property due to its proximity to volatile,
985 flammable, explosive or hazardous materials such as LP gas, propane, gasoline,
986 natural gas, corrosive or other dangerous chemicals.

987
988 (7) Full color photo-simulations showing the proposed site of the
989 Communications Facility with photo-realistic representations of the proposed
990 Communications Facility as it would appear from adjacent properties and the
991 Public Rights-of-Way.

992
993 (8) A written certification, under seal, from the engineer of record that
994 the Communications Facility was designed to be structurally sound, and, at a
995 minimum, in conformance with the Florida Building Code, and any other
996 standards outlined in this section.

997
998 (9) A statement within the application for a Permit that by execution of
999 the application and by applying for the Permit, the Registrant agrees to the
1000 indemnification provisions set forth in Code Section 25-311 hereof.

1001 (r) *City placement of other Facilities within Public Rights-of-Way.* The City
1002 reserves the right to place and maintain, and permit to be placed or maintained, sewer,
1003 gas, water, electric, storm drainage, communications, and other types of utility facilities,
1004 cables or conduit, and to do, and to permit to be done, any underground and overhead
1005 installation or improvement that may be deemed necessary or proper by the City in
1006 Public Rights-of-Way occupied by the Registrant, and the City also reserves the right to
1007 reserve any portion of the Public Rights-of-Way for its own present or future use. The
1008 City further reserves without limitation the right to alter, change, or cause to be
1009 changed, the grading, installation, relocation, or width of the Public Rights-of-Way within
1010 the limits of the City and within said limits as same may from time to time be altered.

1011
1012 (s) *Temporary raising or lowering of Communications Facilities to*
1013 *accommodate other authorized work.* A Registrant shall promptly, at the request of any
1014 Person holding a Permit issued by the City, temporarily raise or lower its
1015 Communications Facility to permit the work authorized by a permit. The expense of
1016 such temporary raising or lowering of such Facilities shall be paid by the Person, other
1017 than the City, requesting the same, and the Registrant shall have the authority to

require such payment in advance. The Registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary relocation.

(t) *Additional requirements.* The following additional requirements apply when a Registrant seeks authority to locate a Communications Facility in the Public Rights-of-Way:

(1) *Prerequisite to seek location on private property or government property outside the Public Rights-of-Way.* Registrants seeking to place a Communications Facility within the Public Rights-of-Way are required to first attempt to locate their proposed Facility on private property or government-owned property outside of the Public Rights-of-Way before applying for a Permit to place their proposed Facilities within a Public Right-of-Way. An application for a Permit to place a Communications Facility or Wireless Communications Facility within the Public Rights-of-Way shall include an explanation as to why the applicant is unable to locate the proposed Facilities on private property or government owned property outside of the Public Rights-of-Way within a 1,000 foot radius of the proposed location for which application is being made.

(2) *Other alternatives.* Registrants seeking to place, construct or modify a Communications Facility in the Public Rights-of-Way shall either:

a. Co-locate the Communications Facility as set out in Florida Statutes § 365.172, as amended, or

b. install the Communications Facility on an Existing Structure within the Public Rights-of-Way, including without limitation existing power poles, light poles and telephone poles or

c. Repurpose an Existing Structure.

d. The Permit application for Co-location must contain attachment agreements, if the Registrant does not own the facility being Co-located upon.

For applications to place a new Communications Facility or replace an Existing Structure or Facility in the Public Rights-of-Way, the Permit application must contain engineering documentation demonstrating either:

(i) That proposed Communications Facility can accommodate multiple Co-locations; or

(ii) Why the City's interest in safe, aesthetic, efficient and effective management of the Public Rights-of-Way is better served by a Facility incapable of accommodating multiple Co-locations; or

(iii) Why a Repurposed Structure would be better suited to or feasible for to the site.

(3) *Emphasis on Arterial or Collector roadways.* Registrants seeking to construct Communications Facilities within the Public Rights-of-Way shall locate their Communications Facilities in the Rights-of-Way of Arterial or Collector Roadways, whenever possible. An application for a Permit to place Communications Facilities in Public Rights-of-Way other than Arterial or Collector Roadways shall explain why the applicant is unable to locate the Communications Facilities in the Public Rights-of-Way of an Arterial or Collector Roadway and shall include an engineering analysis from the applicant demonstrating to the satisfaction of the City Engineer the need to locate the Communications Facilities in the areas proposed in the application. Upon delegation to the City of the regulatory authorities in this Article by the County, State and/or the U.S. Department of Transportation as to the right-of-way jurisdiction under Chapter 337, Florida Statutes, the City may enforce such regulation in this Article within the corporate boundaries of the City to the extent such authority has been delegated to the City as stated above.

(4) *Not significantly impair view from residential structures.* All Communications Facilities shall be located such that views from residential structures are not significantly impaired. Where possible, newly installed Communications Facilities should be located in areas with existing foliage or other aesthetic features in order to obscure the view of the Communication Facility. The requirements of this subparagraph shall not apply to Repurposed Structures, when there is a one-to-one repurposing of an existing structure (i.e. existing light pole).

(5) *Mitigation of impacts; application to Development Review Committee / Property and Right Of Way Committee for recommendations.* Registrants are required to locate Communications Facilities within Public Rights-of-Way in a manner that minimizes their impact to the Surrounding Neighborhood. All applications for Permits to locate a Communications Facility in

the Public Rights-of-Way shall be simultaneously served on the Development Review Committee / Property and Right-of-Way Committee for recommendations to the City Engineer on the following issue under Code Section 25-305, Permit application process:

Sec. 25-305 (t) (5) - Mitigation of Impacts

Sec. 25-305 (t) (6) – Mitigation of visual impact; Stealth Design

Sec. 25-305 (t) (7) - Stealth Design of Communications Facilities in the Public Rights of Way

Sec. 25-305 (t) (8) – Stealth Design of Communications Facilities on Existing Structures in the Public Rights-of-Way

The City Engineer shall consider the recommendations of the Development Review Committee / Property and Right-of-Way Committee in granting or denying or granting, with conditions the application for a Permit for a Communications Facility as it pertains to above referenced subsections under Code Sec. 25-305 (t). The City reserves the right to condition the grant of any Permit to locate a Communications Facility within the Public Rights-of-Way upon the Registrant taking such reasonable measures, consistent with the City's jurisdiction, as the City may determine are necessary to mitigate the impacts of the Communications Facility on the Surrounding Neighborhood. Installation of a Communications Facility under this Chapter shall not interfere with a clear pedestrian path, at a minimum the width required by the Americans with Disabilities ("ADA") and Florida Building Code.

(6) *Mitigation of visual impact; Stealth Design.* Stealth Design for a Communications Facility shall be utilized wherever possible in order to minimize the visual impact of Communications Facilities on Surrounding Neighborhoods. Each application for a Permit to place a Communications Facility in the Public Rights-of-Way shall include:

a. photographs and renderings accurately representative of distances, location and nature of the site where each Communications Facility is proposed to be located,

b. photographs showing the location and condition of properties within a 500 foot radius of the site of each proposed Communications Facility, and

c. a description of the Stealth Design techniques proposed to minimize the visual impact of the Communications Facility and graphic depictions accurately representing the visual impact of the Communications Facility when viewed from the street and from Adjacent properties.

(7) *Stealth Design of Communications Facilities in the Public Rights-of-Way.* Communications Facilities to be placed in the Public Rights-of-Way shall utilize Stealth Design in order to eliminate the need to locate any ground or elevated equipment (other than antennas) on the exterior of a Communications Facility. Communications Facilities to be placed on existing structures shall utilize Stealth Design in order to minimize the need to locate any ground or elevated equipment (other than antennas) on the exterior of the structure. The use of foliage and vegetation around any approved ground equipment may be required by the City based on conditions of the specific area where the ground equipment is to be located. Landscape material appropriate to the location shall be determined and approved by the City's Landscape Plans Examiner under separate Permit.

(8) *Stealth Design of Communications Facilities on Existing Structures in the Public Rights-of-Way.* Communications Facilities to be placed on Existing Structures in the Public Rights-of-Way shall utilize Stealth Design and shall include

(a) top mounted antennas within enclosures that do not extend the diameter of the supporting Existing Structure at the level of antenna attachment; and

(b) side mounted antennas within enclosures that extend no more than two (2) feet beyond the exterior dimensions of the supporting structure at the level of antenna attachment; and

(c) not have antennas mounted less than eight feet above ground level; and

(d) for purposes of calculating (a), (b), and (c) above, the dimensions of the supporting structure do not include any platform, rack, mount or other hardware used to attach an antenna or antenna enclosure to the supporting structure.

(e) Poles that replicate trees or other natural objects are prohibited.

(f) All Stealth Designed Communications Facilities components, including associated hardware shall be designed and constructed in accordance with the High Velocity Zone Criteria specified in the Florida Building Code, Chapter 16, as same may be amended from time to time, and considered as structures under Building Risk Category II. Design and wind load calculations shall be provided per ASCE 7 – 10 (170 MPH). Calculations should be accompanied by Miami-Dade County Notice of Acceptance (NOA) / Product Approvals.

(9) *Additional requirements.* The following additional requirements shall apply to Communications Facilities located in the Public Rights-of-Way:

a. *Requirement to demonstrate that Stealth Design cannot be employed.* Each application to locate equipment at ground level on or adjacent to the exterior of a Communications Facility and each proposal to locate elevated equipment (other than antennas) on or adjacent to the exterior of a Communications Facility shall include engineering documentation demonstrating to the satisfaction of the City Engineer that the proposed Communications Facility cannot employ Stealth Design and that the proposed exterior location and configuration of equipment proposes the minimum equipment necessary to achieve the needed function. In order to avoid the clustering of multiple items of approved ground equipment or elevated equipment in a single area, only one equipment box may be located within 1,000 linear feet of any other equipment box, such distance being measured along the ordinary course of travel of the Public Right-of-Way upon which the equipment box is located.

b. *Maximum volume of exterior equipment where Stealth Design cannot be employed.* Where a Registrant demonstrates that Stealth Design cannot be employed, the individual approved exterior equipment boxes shall not exceed twelve (12) cubic feet in volume.

c. *Distance separation between Communications Facilities in Public Rights-of-Way.* Communications Facilities in the Public Rights-of-

Way must be spaced a minimum of 1,000 linear feet apart from each other, along the line of general vehicular travel, except that no distance requirement shall apply to Repurposed Structures. This subsection may be waived upon a factual showing, supported by sworn testimony or matters subject to official notice, demonstrating to the satisfaction of the City Engineer after consideration of the recommendations of the Development Review Committee / Property and Right-Of-Way Committee that locating a specific Communications Facility less than 1,000 linear feet from other Communications Facilities either:

(i) better serves the City's interests in safe, aesthetic, efficient and effective management of the Public Rights-of-Way than application of the 1,000 feet limitation as set forth above;

(ii) is necessary to address a documented lack of coverage or capacity; or

(iii) will help minimize the total number of Wireless Communications Facilities necessary to serve a particular area.

d. *Height of new Communications Facility Poles or Towers in Public Rights-of-Way.* The height of new Communications Facility Poles and Towers in the Public Rights-of-Way shall be no greater than thirty-six (36) feet, with an antenna not to exceed an additional four (4) feet; provided however that Registrants proposing Communications Facilities with antennas to be located on existing Poles, Towers or Repurposed Structures may increase the height of the existing Pole, Tower or Repurposed Structure up to six (6) feet, if necessary, to avoid adversely affecting existing attachments; and provided further that the overall height above ground of any Communications Facility together with antenna shall not exceed forty (40) feet. Height shall be measured from Grade and shall include the base pad.

e. *Lighting of Communications Facility Poles or Towers in Public Rights-of-Way.* Communications Facilities installed on Poles or Towers that are not light poles, and Repurposed Structures that were not originally light poles, shall not be lit unless lighting is required to comply with FAA requirements; provided, however, at the City's option such Pole or Tower may be required to be equipped with an LED street light. The

cost of installation and operation and maintenance costs thereof shall be borne by the Registrant by way of a maintenance agreement.

f. *No Signage.* Registrants shall not place signage on Communications Facilities installed in Public Rights-of-Way, provided, however, that Repurposed Structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law.

g. *Prohibition against Front Yard location within Residential Blocks.* No Communications Facility shall be placed within a Public Right-of-Way that Abuts any Front Yard in Residential Blocks. Co-location of Communications Facilities within Public Rights-of-Way that abut Front Yard locations within Residential Blocks shall be prohibited.

h. *Limitations on locations in Corner Yards within Residential Blocks.* A Communications Facility within the Public Rights-of-Way abutting a Corner Yard of a Corner Lot within a Residential Block shall not be placed any farther than ten (10) feet from the neighboring property line of the Lot abutting and adjacent to the Corner Lot.

i. *Sight triangles.* No Communications Facility shall be constructed or installed within a triangular shaped area of land, known as a sight triangle, as defined in U.L.D.R. Section 47-35, Definition, and measured as follows:

(i) Ten (10) feet from the intersection point of the edge of a driveway and curb, or in the event that there is no curb, the edge of the alley or street pavement; or

(ii) Fifteen (15) feet from the intersection point of the extended property lines at an alley and a street; or

(iii) Twenty-five (25) feet from the intersection point of the extended property lines at a street and a street; or

(iv) The sight triangle requirements may be reduced to no less than ten (10) feet, when the City Engineer on a case-by-case basis finds that the proposed reduction complies with all City

1291 Engineering standards and the City Engineer shall take into
1292 consideration neighborhood characteristics such as the location of
1293 schools, parks and other community facilities, pedestrian facilities
1294 such as adequate sidewalks, street characteristics such as
1295 pavement with, width of swale (right-of-way line to curb or edge of
1296 pavement for vehicular travelways) the curvature of the street,
1297 speed limits and other similar elements.

1298 Sight triangles located at the intersection of a local street or driveway
1299 within a right-of-way under county, state or federal jurisdictions, may be
1300 subject to the sight triangle requirements of those jurisdictions.
1301

1302 j. *Distance separation from edge of pavement.* No
1303 Communications Facility shall be constructed, operated or maintained in
1304 the Public Rights-of-Way in violation of the State of Florida Department of
1305 Transportation Manual of Uniform Minimum Standards for Design,
1306 Construction and Maintenance for Streets and Highways, Table 3-12,
1307 Minimum Width of Clear Zones. In accordance with Table 3-12, the City
1308 Engineer shall have the authority to reduce the four (4) foot minimum
1309 offset identified in Table 3-12 where that offset cannot be reasonably
1310 obtained and other alternatives are deemed impractical, the City Engineer
1311 shall have the authority to decide reductions in the clear zone in
1312 accordance with the above referenced Table 3-12.
1313

1314 k. *Distance separation from existing sidewalk.* No newly
1315 installed Communications Facility shall be constructed, operated or
1316 maintained in the Public Right-of-Way within one (1) foot of an existing
1317 sidewalk. Co-location on existing Poles or Towers, and use of
1318 Repurposed Structures are exempt from this requirement.
1319

1320 l. *Prohibition against placement on certain Collector and Local*
1321 *Roadways where City has plans for sidewalks.* No Communications
1322 Facility shall be constructed, installed, operated or maintained in the swale
1323 area on the side of a Collector Roadway or Local Roadway where the City
1324 has plans to install a sidewalk of five (5) feet in width or more, nor shall
1325 such Communications Facility be located in such a manner that would
1326 preclude a five (5) foot clear pathway for the planned sidewalk.
1327

1328 m. *Installation at outermost boundary of Public Rights-of-Way.*
1329 Where a superior site design results from placement of a Communications

Facility at or near the outermost boundary of the Public Rights-of-Way, the farthest distance practicable from the centerline of the Public Right-of-Way and edge of pavement is encouraged. To the extent that the location of the sidewalk within the Public Right-of-Way precludes achievement of a superior site design or otherwise precludes compliance with all other requirements of this Article, then the City Engineer or Registrant may propose and the Registrant may include in the Permit application a proposed re-routing of the sidewalk at its own expense, in order to achieve such superior site design or otherwise meet other requirement of this Article.

n. *Maintenance and Graffiti plan.* Each Communications Facility within the Public Rights-of-Way, including any appurtenant features incorporated therewith under this Article shall be maintained in a neat and clean condition at all times. Specifically, but not without limiting the generality of the foregoing, each Communications Facility in the Public Rights-of-Way and appurtenant features shall be regularly maintained so that:

(i) They are free of Graffiti visible from the Public Rights-of-Way or from the Surrounding Neighborhood. All Graffiti shall be removed within two (2) days from receipt of notice thereof by the City that Graffiti exists on the Communications Facility Pole or Tower or appurtenant equipment thereof. A fine of \$50.00 per day shall be imposed for each and every day of non-compliance after receipt of notice.

(ii) It is reasonably free of dirt and grease, rust and corrosion in visible metal areas, chipped, faded, peeling and cracked paint that is visible from the Public Right-of-Way or from the Surrounding Neighborhood. All such conditions shall be remedied within two (2) days from receipt of notice thereof from the City.

(iii) The exterior of any Communications Facility shall not be used for Signage purposes.

o. *Exterior finish.* Communications Facilities, not requiring FAA painting or marking, shall have an exterior, hard durable finish which

enhances compatibility with adjacent uses, as approved by the City Engineer.

(10) *Other state and federal requirements.* The City's action on proposals to place, construct or modify Communications Facilities shall be subject to the standards and time frames set out in Florida Statutes § 365.172, 47 USC § 1455(a), and Orders issued by the FCC, as they may be amended from time to time.

(u) The obligations imposed by the requirements of Sections 25-305 (t) (1) – (10), above, upon Registrants proposing to place or maintain Communications Facilities in the Public Rights-of-Way shall also apply to Registrants proposing to place or maintain any other type of communications facility in Public Rights-of-Ways, if that other type of communications facility involves placement of over-the-air radio transmission or reception equipment in the Public Rights-of-Way.

(v) *No Permit fees for work under this Article.* Pursuant to Florida Statutes § 337.401(3)(c)(1)(b) and other applicable provisions of law, and notwithstanding any other provisions of this Code, the City hereby elects not to charge Permit fees to any Registrant for Permits to do work under this Article in the Public Rights-of-Way.

(w) *Issuance of Permit in violation of Code or construction in violation of Code.*

(1) The issuance of a Permit for a Communications Facility shall not be construed as a right to installation, construction or maintenance of the Communications Facility that fails to meet the requirements of this Article.

(2) The issuance of a Permit for a Communications Facility shall not be deemed or construed to be a Permit for or approval of any violation of any of the provisions of this Article. No Permit presuming to give authority to violate or cancel the provisions of Chapter 25 of this Code shall be void and invalid except insofar as the work or use which it authorizes is lawful.

(3) The issuance of a Permit upon the application for Permit shall not prevent the City Engineer from thereafter requiring the correction of errors when in violation of Chapter 25 of this Code.

Section 25-306. Suspension of Permits.

The City may suspend a Permit for work in the Public Rights-of-Way for one or more of the following reasons:

- (1) Violation of Permit conditions, including conditions set forth in the Permit, this Article or other applicable City ordinances, codes or regulations governing placement or maintenance of Communications Facilities or in the Public Rights-of-Way;
- (2) Misrepresentation or fraud by Registrant in a Registration or Permit application to the City;
- (3) Failure to properly renew, or ineffectiveness of Registration; or
- (4) Failure to relocate or remove facilities as may be lawfully required by the City.

Upon the recommendation of a suspension of the Permit by the City Engineer, the City Engineer shall provide notice and an opportunity to cure any violation of subsections (1) through (4) above, each of which shall be reasonable under the circumstances. The suspension shall terminate upon curing of the underlying violation(s).

Sec. 25-307. Appeals.

(a) Any person aggrieved by any action or decision of the City Engineer with regard to any aspect of Registration or issuance of or suspension of a Permit under this Article may appeal to the City Manager by filing with the City Manager, within 30 days after receipt of a written decision of the City Engineer, a notice of appeal, which shall set forth concisely the action or decision appealed from and the reasons or grounds for the appeal. No requests for extension of time for filing an appeal will be permitted; provided however, the right of appeal of any action or decision of the City Engineer with regard to an aspect of Registration or issuance of or suspension of a Permit under this Article shall not be available in the event a citation violation notice has been given pursuant to the terms of Code Sec. 11-17, et seq., the right of appeal under a citation violation notice procedure being provided for under Code Section 11-14.

(b) The only appeal that shall be considered with respect to an action or decision of the City Engineer with regard to any aspect of Registration or issuance or suspension of a Permit under this Article are those appeals that allege that there is error in any order, requirement, decision, or determination made by the City Engineer in the enforcement of this Article.

(c) The City Manager shall set such appeal for a hearing held by the City Manager on the very next available date following such notice of appeal and cause notice thereof to be given to the appellant and the City Engineer and the City Engineer shall present the case on behalf of the City.

(d) The City Manager shall hear and consider all facts material to the appeal and render a decision within 20 calendar days of the date of the hearing. The City Manager may affirm, reverse or modify the action or decision appealed from; provided, that the City Manager shall not take any action which conflicts with or nullifies any of the provisions of this Article.

(e) Any person aggrieved by any decision of the City Manager on an appeal shall be entitled to apply to the Circuit Court for a review thereof by Petition for Writ of Certiorari in accordance with the applicable court rules.

Sec. 25-308. Involuntary termination of Registration.

(a) The City Manager may terminate a Registration if:

- (1) A federal or state authority suspends, denies, revokes a Registrant's certification or license required to provide Communications Services;
- (2) The Registrant's placement or maintenance of a Communications Facility in the Public Rights-of-Way presents an extraordinary danger to the general public or other users of the Public Rights-of-Way and the Registrant fails to remedy the danger promptly after receipt of written notice;
- (3) The Registrant violates Florida Statutes § 843.025, as same may be amended from time to time;
- (4) The Registrant violates Florida Statutes § 843.165, as same may be amended from time to time;
- (5) The Abandonment by the Registrant of all of its Communications Facilities in the Public Rights-of-Way and noncompliance with City Code Section 25-315 hereof; or

(6) Repetitive violations of any of the provisions of this Article.

(b) Prior to termination, the Registrant shall be notified by the City Manager, with a written notice setting forth all matters pertinent to the proposed termination action, including which of subsections (a)(1) through (a)(5) above is applicable and the reason therefore, and describing the proposed action of the City with respect thereto. The Registrant shall have fifteen (15) days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the City Manager to accomplish the same. If the plan is rejected by the City Manager, the City Manager shall provide written notice within seven (7) days of such rejection to the Registrant and shall make a recommendation to the City Commission regarding a decision as to termination of Registration. At the next available date for a Regular Meeting of the City Commission, but no sooner than ten (10) days after the City Manager makes his recommendation to the City Commission, the City Commission shall hear appeals from the Registrant and the City Manager. The City Commission shall make a final determination as to termination of the Registration and the terms and conditions relative thereto. Any person aggrieved by any decision of the City Commission on an appeal regarding termination of a Registration shall be entitled to apply to the Circuit Court for a review thereof by Petition for Writ of Certiorari in accordance with the applicable court rules.

(c) In the event of termination, the former Registrant shall: (1) notify the City of the assumption or anticipated assumption by another Registrant of ownership of the Registrant's Communications Facilities in the Public Rights-of-Way; or (2) provide the City with an acceptable plan for disposition of its Communications Facilities in the Public Rights-of-Way. If a Registrant fails to comply with this subsection (c), which determination of noncompliance is subject to appeal as provided in City Code Section 25-307 hereof, the City may exercise any remedies or rights it has at law or in equity, including, but not limited to requiring the Registrant within ninety (90) days of the termination, or such longer period as may be agreed to by the Registrant and City Manager, to remove some or all of the Communications Facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to its original condition before the initial installation of the facilities.

(d) In any event, a terminated Registrant shall take such steps as are necessary to render safe every portion of the Communications Facilities remaining in the Public Rights-of-Way of the City.

(e) In the event of termination of a Registration, this section does not authorize the City to cause the removal of Communications Facilities used to provide another service for which the Registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is registered with the City, if required.

Sec. 25-309. Existing Communications Facilities in Public Rights-Of-Way.

A Communications Services Provider, Communications Facility Provider or Pass-through Provider with an existing Communications Facility in the Public Rights-of-Way of the City has 60 days from the effective date of this Article to comply with the terms of this Article, including, but not limited to, Registration, or be in violation thereof

Sec. 25-310. Insurance.

(a) A Registrant shall provide, pay for and maintain satisfactory to the City the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having an A. M. Best A-VII or better rating. All liability policies shall provide that the City is an additional insured as to the activities under this Article. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the City annually. Thirty (30) days advance written notice by registered, certified or regular mail or facsimile as determined by the City must be given to the City's Risk Manager of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the City.

(b) The limits of coverage of insurance required shall be not less than the following:

- (1) Worker's compensation and employer's liability insurance.
Worker's compensation—Florida statutory requirements.
- (2) Comprehensive general liability.
Bodily injury and property damage: \$1,000,000.00 combined single limit each occurrence.

- (3) Automobile liability.
Bodily injury and property damage: \$1,000,000.00 combined single
limit each accident.

(c) The coverage provided herein shall be for a period not less than the period for which the indemnification obligations under City Code Section 25-311 hereof are imposed.

Sec. 25-311. Indemnification.

(a) A Registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the City arising out of the placement or maintenance of its Communications Facilities in the Public Rights-of-Way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Article (hereinafter, "claims"); provided, however, that a Registrant's obligation hereunder shall not extend to any claims caused by the gross negligence or wanton or willful acts of the City or any of its officers, servants, agents, or employees. This indemnification includes, but is not limited to, the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. The City agrees to notify the Registrant, in writing, within a reasonable time of the City receiving notice, of any issue it determines may require indemnification. Nothing contained in this section shall be construed or interpreted: (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or (2) as a waiver of sovereign immunity beyond the waiver provided in Florida Statutes § 768.28 and within the limits provided therein, as it may be amended from time to time.

(b) Registrant shall investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and shall bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the City, registrant shall assume and defend not only itself but also the City in connection with any such claims and any such defenses shall be at no cost or expense whatsoever to the City (exercisable by the City Attorney), provide that the City shall retain the right to select counsel of its own choosing

(c) The indemnification requirements under this Section shall survive and be in full force and effect for a period of five (5) years after the termination or cancellation of a Registration.

Sec. 25-312. Performance bond.

(a) Prior to issuing a Permit where the work under the Permit will require restoration of Public Rights-of-Way, the City Engineer shall require a performance bond by a surety duly authorized to do business in the State of Florida and having an A.M. Best A-VII rating or better. The bond shall be in the amount of 125 % of the construction and restoration cost estimate, as certified by a professional engineer licensed in the State of Florida, to secure proper performance under the requirements of any Permits and the restoration of the Public Rights-of-Way. Twelve (12) months after the completion of the restoration of the Public Rights-of-Way in accordance with the bond, the Registrant may eliminate the bond. However, the City Engineer may subsequently require a new bond for any subsequent work by the same Registrant in the Public Rights-of-Way. The performance bond shall provide that: "For twelve (12) months after issuance of this bond, this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew." Notwithstanding the foregoing, a performance bond will not be required if the cumulative costs of restoration for projects for which Permits have been issued and for which performance bonds are still outstanding is less than the amount of the security fund filed by the Registrant under City Code Section 25-313.

(b) The rights reserved by the City with respect to any performance bond established pursuant to this section are in addition to all other rights and remedies the City may have under this Article, or at law or equity.

(c) The rights reserved to the City under this section are in addition to all other rights of the City, whether reserved in this Article, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the City may have.

Sec. 25-313. Security fund.

At the time of Registration, the Registrant shall be required to file with the City, for City approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of \$50,000.00, having as a surety a company qualified to do business in the State of Florida having an A. M. Best A-VII rating or better, which shall be referred to as the "security fund." The security fund shall be maintained from such time through the earlier of: (a) transfer, sale, assignment or removal of all of the Registrant's Communications

Facilities or Wireless Communications Facilities in the City's Public Rights-of-Way; or (b) twelve (12) months after the termination or cancellation of any Registration. The security fund shall be conditioned on the full and faithful performance by the Registrant of all requirements, duties and obligations imposed upon the Registrant by the provisions of this Article. The security fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the Registrant's full and faithful performance at all times. In the event a Registrant fails to perform its duties and obligations imposed upon the Registrant by the provisions of this Article, subject to City Code Section 25-314 of this Article, there shall be recoverable, jointly and severally from the principal and surety of the security fund, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or Abandonment of any facilities of the Registrant in the Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund.

Sec. 25-314. Enforcement remedies.

(a) A Registrant's failure to comply with provisions of this Article shall constitute a violation of this Code and shall subject the Registrant to the penalties provided by City Code § 1-6, termination of Registration in accordance with the provisions of City Code § 25-308, suspension of permit under the provisions of City Code § 25-306 and a Registrant who is alleged to have violated any provisions of this Article may be further subject to a civil penalty in accordance with the provisions of Code Section 11-25 and the procedures promulgated under Code Section 11-17, et seq. or injunctive relief as otherwise provided by law.

(b) Failure of the City to enforce any requirements of this Article shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

Sec. 25-315. Abandonment of a Communications Facility.

(a) Registrants shall comply with the provisions of City Code Sections 25-303 (g) and 25-305 (c) (9), relating to Abandoned equipment and the addition of equipment. Further, upon Abandonment of a Communications Facility or Wireless Communications Facility owned by a Registrant in the City's Public Rights-of-Way, the Registrant shall notify the City, in writing, within thirty (30) days. Additionally, Registrants shall comply with the provisions of City Code Section 25-303(g) relating to bi-annual Registration and updating of facilities.

(b) The City shall direct the Registrant by written notice to remove all or any portion of such Abandoned Communications Facility at the Registrant's sole expense if the City determines that the Abandoned Communications Facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such facility:

- (1) compromises safety at any time for any Public Rights-of-Way user or during construction or maintenance in any Public Rights-of-Way;
- (2) prevents another person from locating facilities in the area of the Public Rights-of-Way where the abandoned facility is located when other alternative locations are not reasonably available; or
- (3) creates a maintenance condition that is disruptive to the Public Rights-of-Way's use.
- (4) In the event of (2) above, the City may require the third person to coordinate with the Registrant that owns the existing facility for joint removal and placement, where agreed to by the Registrant.

(c) In the event that the City does not direct the removal of the Abandoned Communications Facility, the Registrant, by its notice of Abandonment to the City, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the City or another person at such third party's cost.

(d) If the Registrant fails to remove all or any portion of an Abandoned facility as directed by the City within a reasonable time period, not to exceed sixty (60) days, as may be required by the City under the circumstances, the City may perform such removal and charge the cost of the removal against the Registrant and utilize the bond required pursuant to City Code Section 25-313, for this purpose.

Sec. 25-316. Reports and records; inspections.

(a) A Registrant shall provide the following documents to the City as received or filed.

- (1) Upon reasonable request, any pleadings, petitions, notices and documents, which may directly impact the obligations under this Article and

1717 which are reasonable necessary for the City to protect its interests under this
1718 Article.

1719
1720 (2) Any request for protection under bankruptcy laws, or any judgment
1721 related to a declaration of bankruptcy.

1722
1723 (b) Nothing in this section shall affect the remedies a Registrant has available
1724 under applicable law.

1725
1726 (c) In addition, the City may, at its option, and upon reasonable notice to the
1727 Registrant, inspect the Communications Facilities in the City's Public Rights-of-Way to
1728 ensure the safety of its residents.

1729
1730 (d) The City shall keep any documentation, books and records of the
1731 Registrant confidential to the extent required or permitted under Florida law.

1732

1733 **Sec. 25-317. Force majeure.**

1734

1735 In the event a Registrant's performance of or compliance with any of the
1736 provisions of this Article is prevented by a cause or event not within the Registrant's
1737 control, such inability to perform or comply shall be deemed excused and no penalties
1738 or sanctions shall be imposed as a result, provided, however, that such Registrant uses
1739 all practicable means to expeditiously cure or correct any such inability to perform or
1740 comply. For the purposes of this section, cause or events not within a Registrant's
1741 control shall include, but not be limited to, acts of God, floods, earthquakes, landslides,
1742 hurricanes, fires and other natural disasters, acts of public enemies, riots or civil
1743 disturbances, sabotage, strikes and restraints imposed by order of a governmental
1744 agency or court. Causes or events within Registrant's control, and thus not falling within
1745 this section, shall include, without limitation Registrant's financial inability to perform or
1746 comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of
1747 Registrant's directors, officers, employees, contractors or agents.

1748

1749 **Sect. 25-318. Reservation of rights.**

1750

1751 (a) The City reserves the right to amend this Article as it shall find necessary
1752 in the lawful exercise of its police powers.

1753

1754 (b) The provisions of this Article shall be applicable to all Communications
1755 Facilities placed in the City's Public Rights-of-Way within the City on or after the

effective date of this ordinance and shall apply to all existing Communications Facilities placed in the Public Rights-of-Way prior to the effective date of this ordinance, to the full extent permitted by state and federal law, except that any provision of this Article regarding the size, composition, or location of Communications Facilities shall not apply to Communications Facilities lawfully placed within any Public Right-of-Way within the City prior to the effective date of this ordinance.

Sec. 25-319. No liability or warranty.

Nothing contained in this Article shall be construed to make or hold the City responsible or liable for any damage to persons or any property whatsoever, from any cause whatsoever, arising from the use, operation or condition of the Registrant's Communications Facilities by reason of any inspection or re-inspection authorized herein or failure to inspect or re-inspect. Nor shall the issuance of any Permit or the approval or disapproval of any placement or maintenance of the Registrant's Communications Facilities as authorized herein constitute any representation, guarantee or warranty of any kind by, or create any liability upon the City or any official, agent or employee thereof. Additionally, the City shall not be responsible for any relocation costs incurred by any Registrant due to the City's or any other party's work in the Public Rights of Way.

SECTION 2. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 3. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 4. That this Ordinance shall be in full force and effect upon final passage.

PASSED FIRST READING this the ___ day of _____, 2016.

PASSED SECOND READING this the ___ day of _____, 2016.

ATTEST:

Mayor
JOHN P. "JACK" SEILER

1795 _____
1796 City Clerk
1797 JEFFREY A. MODARELLI
1798
1799
1800 L:\COMM 2016\Ordinances\Feb 2\rbd - Telecommunications.docx